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THE RENT STABILIZATION PROGRAM

**CITY OF BERKELEY
DECEMBER 1983**





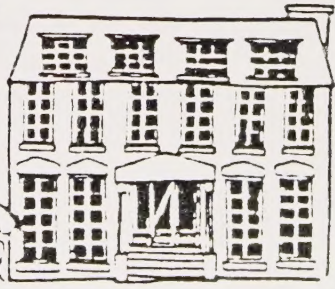
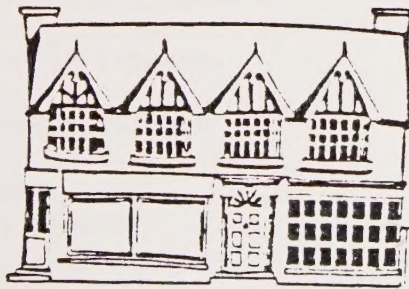
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APPENDIX

Public Information Materials

Eviction Brochure

IRA Brochure

New Buyers Brochure

General Information Brochure

City of Berkeley



CITY MANAGER'S OFFICE
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6580

January 5, 1984

To: Honorable Mayor and
Members of the City Council

From: Daniel Boggan, Jr., City Manager

Subject: THE RENT STABILIZATION PROGRAM

Introduction

The purpose of this report is to provide the City Council with a comprehensive overview of the history, purposes, practices, issues and plans of the Rent Stabilization Program.

The following report contains:

- A historical overview of Rent Control in Berkeley with a summary page of applicable Ordinances (Measure I, Ordinance 5212, Measure D, Measure G and Measure N) setting forth the scope and intent of the program.
- A statistical presentation of the program including number of units covered and the number of units registered and revenue received for the registration periods.
 - The revised budget based on the latest financial data available, and a report on the financial status of the program as of August 31, 1983. The quarterly statistical report requested by the City Council.
 - A statistical report from the Public Information Unit defining the number of citizens served for the July 1 - October 31, 1983 period and the number and types of inquiries fielded by this component of the program.
- A staffing model and program operation chart as well as a concise overview of the programmatic operation of the various units in the Rent Stabilization Program:
 - Public Information Unit
 - Registration Unit
 - Hearings Unit
 - The Appeals Process

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Subject: THE RENT STABILIZATION PROGRAM

- An overview of the role of the Rent Stabilization Board, its role, how it functions including an explanation of the role of the standing committees of the Board.
- An outline of issues currently being deliberated by the Rent Stabilization Board.
- An outline of the 1984 Annual General Adjustment Process including the Study of Operating/Maintenance Costs prepared by Baar/Keating, the AGA Committee Report, the Minority AGA Report, the preliminary and final staff report as well as the 1984 Order adopted by the Rent Stabilization Board on October 26, 1983.
- The legal opinion on Measure N adopted by the voters in June 1982 which will be implemented as of the June 7, 1984 election of Rent Board members. The elected Rent Board members will take office as of July 1, 1984. The legal opinion responds to pertinent issues, i.e. staffing impact, financial implications, etc.
- A glossary of rent control terms.
- Copies of brochures and informational materials currently available to the general public regarding a number of rent control issues.

Attachments

**A HISTORICAL OVERVIEW
OF RENT CONTROL
IN BERKELEY SINCE 1978**



A HISTORICAL OVERVIEW OF RENT CONTROL IN BERKELEY SINCE 1978

The purpose of this report is to provide a historical overview of rent control in Berkeley, California, from 1978 to the present. The report is organized into three main sections: a historical overview, a description of the current rent control system, and a discussion of the challenges facing the system.

The historical overview section discusses the origins of rent control in Berkeley, the evolution of the system over time, and the impact of rent control on the housing market. The current rent control system section describes the structure of the system, the role of the Rent Control Board, and the process for setting rents. The challenges facing the system section discusses the issues of inflation, housing shortages, and the impact of rent control on the housing market.

The report concludes with a discussion of the future of rent control in Berkeley. It suggests that the system should be reformed to address the challenges facing it, and that the Rent Control Board should be given more authority to set rents.



The history of modern rent control legislation in Berkeley spans more than a decade. In June, 1972, the voters passed a charter amendment which established a comprehensive system of rent control and provided for an elected rent board. The amendment was found invalid by the California Supreme Court in 1976 in Birkenfeld v. City of Berkeley, 17 Cal. 3d 129, because it did not provide for a general adjustment mechanism to enable landlords to readily recoup increased costs attributable to most properties. The Court also held that it imposed certain procedural barriers to the unlawful detainer process which were not permitted under State law. Although the Court struck down the Berkeley law, it clearly held that rent control was properly a matter for local regulation. The court's decision also established some of the parameters necessary for such legislation to withstand judicial review.

Some two years after the Birkenfeld decision, Berkeley voters passed Measure I in November, 1978. Rents for most Berkeley properties, commercial and residential, were affected. Exemptions were provided for property which was not taxed, non-profit cooperatives, transient hotels, hospitals and owner-occupied properties containing 4 units or less.

Certain calculations were necessary to determine the lawful rent for a given unit under Measure I. The ordinance required that rents be rolled back to the June 6, 1978, level until the end of that year. For 1979, the maximum allowable rent for a covered unit was the June 6, 1978, rent reduced by an amount equivalent to 80% of the landlord's share of the property tax reduction resulting from Proposition 13. The rent reduction was to be apportioned amongst the units in the building and divided by the number of rental payments for the year.

Rents could be freely increased under Measure I so long as:

1. The rent increase was necessary as a result of increased costs including properly amortized capital improvements;
2. The landlord had already spent an amount of money equal to 20% of the Proposition 13 savings on such increased costs;
3. The increase was properly noticed and a detailed financial statement justifying the rent increase was provided to the tenant.

Measure I was designed to be self-enforcing. Tenants were given the right to sue non-complying landlords for damages and to seek injunctive relief.

By its terms, most of the provisions of Measure I expired at the end of 1979. In late November of that year, the City Council passed Ordinance No. 5212 N.S. which established a temporary rent stabilization program. This ordinance closely resembled Measure I. However, it covered only residential properties and provided no exemption for properties which were exempted from property tax. The other exemptions were virtually the same as those contained in Measure I.

Ordinance No. 5212-N.S. regulated rents from January, 1980, until the voters passed a permanent rent stabilization ordinance in June, 1980. The lawful rent in December 30, 1979, was selected as the starting point for all adjustments. Rents could be increased so long as the increase was cost-justified

and the total increases imposed during the life of the ordinance did not exceed 5%. The requirements for proper documentation of a permissible increase and the tenant remedies were very similar to those contained in Measure I.

On June 3, 1980, the present Rent Stabilization and Eviction for Good Cause Ordinance was enacted by the voters. It provides for comprehensive regulation of rents including registration of units, general and individual adjustments of rent ceilings, enforcement powers and tenant remedies. Evictions are limited to good causes such as non-payment of rent and breaches of the rental agreement which the tenant has failed to cure after written notice. The Rent Stabilization Board administers the provisions of the ordinance.

In June, 1982, the voters added additional provisions to the ordinance with the adoption of the Tenants Rights Amendments Act of 1982. This ballot measure reduced the owner-occupied exemption from 4 units to properties containing 2 units or less. It required the annual payment of interest on security deposits, increased the penalties for late payment of the registration fee, required the Board to mail tenants copies of rent registration statements, provided for permanent loss of the annual general adjustments under certain circumstances and strengthened the eviction controls. The amendments also established the requirement for a two-thirds vote of the Board for any annual general adjustment of rent ceilings which exceeds 45% of the increase in the Consumer Price Index.

In June, 1983, the voters passed Measure N. This charter amendment provides for the direct election of the Rent Board members. It defines landlords as members of the regulated class and limits the matters in which they can participate in decision-making. The Board becomes a quasi-independent agency with the power to hire and fire staff. Certain funding restrictions are also removed. The Board is empowered to administer both the current ordinance and any other rent control ordinance which is enacted in the future. The first election for Rent Stabilization Board members will take place in June, 1984.

A
STATISTICAL
PRESENTATION OF
THE PROGRAM OPERATION



The following is a statistical presentation of the Rent Stabilization Program which will give some idea of the scope of the program and the services offered. Staff is presently working on improving statistics and incorporating the needs of the new systems in the computer data base due to be on line in 1984.

REGISTRATION STATUS

The Ordinance requires that all covered residential rental units be registered by September 1 of each year. The following chart depicts registration compliance and revenue for September 1 and June 30 of each program year since the implementation of Measure D in June 1980. The issues of the number of rental units in Berkeley covered under the ordinance is one that has yet to be resolved. The best possible information available estimates that there are:

27,000 Residential rental units
1,200 Section 8 units
2,800 Owner-occupied units exempt for other reasons
23,000 Units covered under the law

Number Of Units Registered By	Current Year Registration Fee Revenue As Of September 1	Number of Units Registered As Of	Registration Fee Revenue and Penalty Assessment Revenue received As Of June	
Sept 1 1980 6,505	\$ 78,064	June 30 1981 16,003	\$192,000 37,000	Reg. Fee Penalty
Sept 1 1981 7,286	87,442	June 30 1982 13,689	164,268 131,732	Reg. Fee Penalty
Sept 1 1982 15,744	472,320	June 30 1983 21,323	639,690 131,461.31	Reg. Fee Penalty
Sept 1 1983 15,756	472,680			

As of November 30, 1983 19,516 units have been registered for 1983-84.

Rent Stabilization Program Financial Statement as of October 31, 1983

		Revised Budget 8/83	Expend. Month of October	Total Expend. To Date	Balance
5101	Monthly Rated	310443	1779183	7652480	
5103	Nr/ Daily Rated	39309	103147	371525	
5104	Overtime	5858			
	Total	355610	1882330	8024005	27536995
5201	City owned veh.	100		580	
5204	Reg. + Adm. Fees	500			
5205	Private Auto	200	1701	1701	
5206	Other Transp.	0			
	Total	800	1701	2281	77719
5311	Typewriter, Repair	500			
5312	Photocopy	0		18900	
5313	Misc. Office Mach.	400		0	
5322	Other Maint	5000		0	
	Total	5900	0	18900	5711
5401	Paper, Reg.	150	0	14122	878
5405	Printing, Outside	350	0	158568	< 123568 >
5406	Printing, Inside	15000	348387	780714	719286
5409	Postage	13500	243386	1107524	242476
5413	Newspaper Adv.	2000	18343	159629	40371
5414	Misc. Supplies	300	29160	74669	< 44669 >
5421	Telephone	6000	43622	92923	507077
5432	Photocopy Equip	6000	22458	72470	527530
5434	Building Rental	0	12800	12800	< 12800 >
5436	Other Rental	0	0		
5459	Office Supplies	5000	36744	286942	213058
5487	Refunds, Other	3000	45816	114432	185568
5488	Other Misc.	0	15380	84841	< 84841 >
	Total	51300	816096	2959634	2170366

Foster
12/20/83

Financial Statement as of October 31, 1983

		Revised Budget 8/83	Expend. month of Oct.	Total Expend. TO Date	Balance
5524	Election	60000			60000
5530	Other Spec. Serv.	27110	690857	1747174	963826
5533	Stipends	24000			24000
5536	Consultants	20000			20000
5538	Other Pers. Cont.	20000	408000	1975365	24635
	Total	151110	1098857	3722539	11388461
5611	Typewriters	2000			2000
5612	Adding/Calc. Mach.	250			250
5614	Furniture	2200	59406	59406	160594
5616	Auto Data Process	2500	2138818	2138818	<1888818>
5617	Other Furniture	0	43559	134462	<134462>
	Total	6950	2241783	2332686	<1637686>
6001	Junge	109395			109395
6098					
	Total	109395			109395
	Division Total	681065	6040767	17060045	51046455
	POD Admin.	13395	56078	247510	1091990
	Legal	135761	566461	2132918	11443182
	Finance	37579	208744	584825	2873075
	Total	186735	831283	3265253	15408247
	Grand Total	867900	6872050	20306398	66473602

Fraser
12/20/83

REGISTRATION, APPEALS, HEARINGS, AND EVICTIONS: RENT STABILIZATION PROGRAM 1983/1984

	1st QUARTER SEPTEMBER 30	2nd QUARTER DECEMBER 31	3rd QUARTER MARCH 31	4th QUARTER JUNE 30	CUMULATIVE YEAR TO DATE
A. <u>Registration Fees</u>					
Amount Billed *	1,260,036.67				1,260,036.67
Amount Received	609,225.32				609,225.32
Amount Delinquent as of end of Quarter	650,811.35				650,811.35
Number of Units Registered as of end of Quarter	15,756.00				15,756.00
B. <u>Hearings</u>					
Landlord Petitions	11				11
Tenant Petitions	33				33
Rent Withholding Petitions	18				18
Total Petitions Filed	62				62
<u>Petition Hearings Conducted</u>					
Landlord initiated Hearings	8				8
Tenant initiated Hearings (Repairs/Housing Services)	29				29
Tenant Rent Withholding Hearings	17				17
Consolidated Hearings	0				0
Total Hearings Conducted	54				54
C. <u>Appeals</u>					
Petitions Filed	39				39
Decisions Rendered	27				27
D. <u>Evictions</u>					
Eviction Notices Received	125				125
Notices in Compliance	102				102
Notices not in Compliance	23				23
* 743,160.00 83-84 Registration Fees					
62,059.68 82-83 Registration Fees					
431,084.61 82-83 Penalties & Fees/Penalties					
23,732.38 Closed Accounts					

PUBLIC INFORMATION UNIT
STATISTICAL REPORT ON SERVICE DELIVERY
JULY 1, 1983 TO OCTOBER 31, 1983

Number of calls and visits - 3,979

Tenants - 2,073

Landlords - 1,734

Others - 172

TYPES OF INQUIRIES

Registration 2,281

Rent Increases 509

Deposits 223

Tenant/Landlord Disputes 147

Evictions 282

AGA/IRA 673

General Information 430

Specific Complaints 30

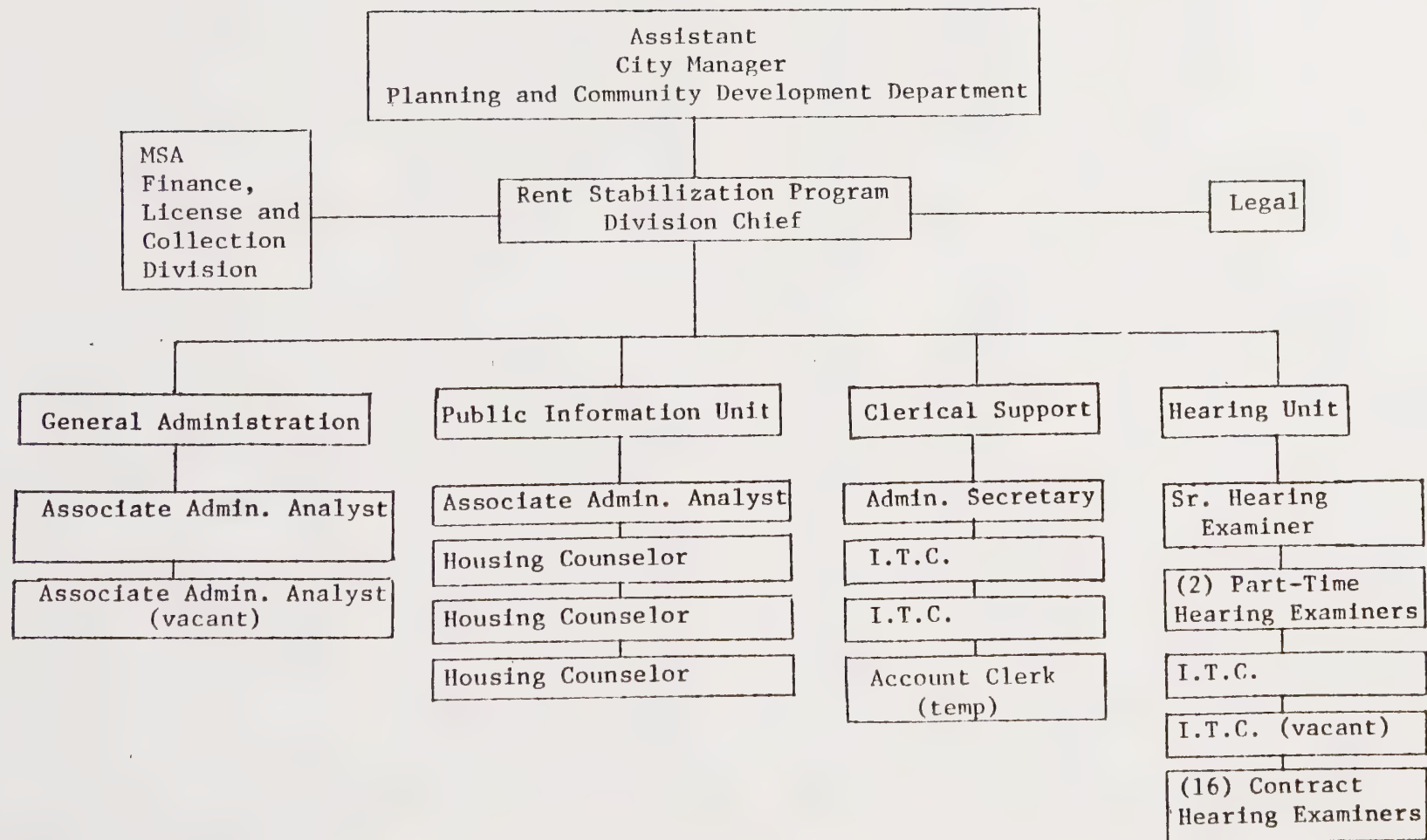
*4,575

*Some clients have questions in more than one area.

OVERVIEW OF THE PROGRAM OPERATION



RENT STABILIZATION PROGRAM
STAFFING MODEL AND
PROGRAM OPERATION CHART
AS OF DECEMBER 1983



THE PUBLIC INFORMATION UNIT

The Public Information Unit provides information and comprehensive housing counseling services to the public. Since 1980 the unit has expanded from one to four full-time counselors.

The caseload is very heavy and staff responds to several hundred inquiries every week from members of the public. The statistics for the last quarter, July-September provide a typical picture of the number of questions, problems and crisis brought to the Public Information Unit. During the quarter, staff responded to 3814 calls and office visits. Tenants represented 61% of the calls/visits, rental property owners represented 35% and 4% were miscellaneous (ie: realtors, homeowners). In addition, staff responded to 124 letters and 125 eviction notices. Over 975 requests for exemption from the law were reviewed and responded to.

Other activities of the Public Information Unit over the past year have included:

1. The re-establishment of the community outreach and education program. Starting in July, staff began outreach to targeted populations in Berkeley. The first two populations chosen for outreach were the elderly and the Latino community. Staff has provided speakers, staff training, newsletter articles and brochures to numerous community agencies and publications serving these populations. A Spanish language information brochure is currently at the printer.
2. In order to increase public participation in the annual general rent adjustment process, it was arranged for KPFB-FM to broadcast one of the three public hearings held by the Rent Stabilization Board this fall.
3. Public Service Announcements on various rent stabilization topics are regularly mailed to local radio stations for broadcast. Press releases are issued every week to ten days to keep the media abreast of Rent Stabilization Program policy and regulation changes as well as new services.
4. A survey is currently being conducted to ascertain how much tenants and landlords know about the Ordinance. The results will help staff focus outreach and education activities on the areas of the law in which it is most needed.
5. The program has produced a series of informational brochures, including:
 - Rent Stabilization Board Procedures
 - Evictions
 - General Information (Spanish and English)
 - New Buyer Information
 - Mediation

Other brochures on the Individual Rent Adjustment process and deposits are planned for later this year.

6. Two citywide mailings to 60,000 tenants and rental property owners have been prepared to inform them of their rights and responsibilities under the law. A special postcard mailing on the annual general adjustment and the ruling in the Fisher case was just mailed to 30,000 tenant and owner households.
7. To increase access to information, the Program has instituted regular evening telephone hours every Monday night until 7p.m. An additional evening of counseling will be added later this winter. In addition, extra evening counseling hours are scheduled near the rent registration deadline and after major Rent Stabilization Program mailings to deal with the influx of calls and visits received from the public.
8. The program began offering free mediation services to assist tenants and rental property owners in resolving disputes. A staff member was professionally trained by the U.C. Berkeley Mediation Center.
9. The Public Information Unit works closely with the Hearing Unit to offer a weekly 'nuts-and-bolts' workshop on the individual rent adjustment workshop. A monthly evening workshop started in October. Sixty-one workshops will be given this year.
10. To increase participation by community organizations and interested individuals, the Program began publishing "Information Alert" an informational newsletter published six times a year covering the activities of Rent Board committees, upcoming public hearings, future agenda items to be considered by the Board and other information of interest to those actively involved with rent stabilization. An expanded list of community groups was developed for the mailings and over 100 copies are distributed free.
11. The Program began publication of The Advisor, the bi-annual newsletter of the program. It provides general information to the public about Rent Board activities. Each issue is distributed to 7,000 citizens.
12. The Program instituted the Early Registration Project to allow rental property owners who would be away for the summer to register their rental property early. Notices of the Early Registration Project were mailed to owners in May. Over 50 took advantage of the program.
13. The Public Information Unit has worked closely with the Cal-In-Berkeley program to recruit UC Berkeley interns for the program. Over 30 students have interned with the program since 1980. Interns have been primarily responsible for outreach and education activities.

The Public Information Unit provides extensive, ongoing in-service training to keep staff abreast of changes in the rent law and regulations as well as policy and administrative procedures. Nineteen training workshops have been held in the last year.

To train new staff, an intensive two week program and a training manual have been developed. This is essential in integrating new staff members as quickly as possible.

The Program also hosted a statewide training seminar for Rent Stabilization commissioners and staff. Over 100 staff and commissioners from nearly every rent stabilized jurisdiction in California attended. Topics included: developing workplans, running meetings, managing rent registration, use of computers, and other areas of technical skills.

The Public Information Unit also staffs the Eviction Committee of the Rent Stabilization Board. The committee has conducted a study of evictions for owner occupancy and a study of evictions for repairs to evaluate compliance levels with the law. The committee has also developed criteria and a procedure for evaluating key eviction cases for possible legal intervention by the City. A regulation on owner-occupancy evictions was recently enacted by the Rent Stabilization Board.

Staff provides technical and research assistance to the committee in evaluating issues. Staff maintains statistics on the numbers and reasons for evictions.

Last quarter, staff reviewed and evaluated 125 eviction notices received by the program as required by law. The vast majority of evictions (66%) were for non-payment of rent. Some 18% of the eviction notices were deficient in some way. Form letters are routinely sent to both tenant and owner about the eviction, informing them about the law and noting anything which appears to be in violation of the ordinance in the eviction notices. This assists rental property owners in correcting deficient notices before the cases go to court and provides protection to tenants from illegal evictions.

The Eviction Committee is studying evictions that occur for repairs. They hope to evaluate levels of compliance with the eviction law in unlawful detainers this winter.

REGISTRATION REQUIREMENTS

Section 8 of the Rent Stabilization and Eviction for Good Cause Ordinance and Chapter 8 of the Regulations set forth the requirements for registering each residential rental unit covered by the Ordinance. In order for a unit to be legally registered, all fees, penalties and interest must be paid and all information provided for all years on each unit.

Registration forms and bills are sent at the end of July to each account. The bill must be paid by September 1 or a 100% penalty is assessed on September 2 and every 60 days the account remains delinquent. Section 11 of the Ordinance concerning the Annual General Adjustment penalizes owners who are not registered by December 1 by decreasing the rent raise 10% for each month registration is late.

In 1982 the Board passed Regulation 883 which allows for the waiving of rent registration penalties in cases in which a "good cause" can be substantiated. The regulation lists 7 causes which can be waived by staff action which basically correct administrative errors. All other requests are considered by the Registration Committee which makes a recommendation to the Board. In the last year the Board has considered 218 requests and waived the penalties for 100; 20 are pending a decision now.

The Rent Stabilization Ordinance covers 25,736 rental units in 5,884 accounts. Unfortunately, due to lack of staff in previous years, registration forms were not reviewed for accuracy. During the summer of 1983 a registration review was conducted to notify each owner if essential information was missing from the file. 6259 accounts were reviewed. 3674 accounts were in order including accounts that were to be closed due to the owner returning to the home etc.. 2585 accounts were sent new forms to complete. Over 1000 forms were returned and are still in the process of being reviewed. This review process greatly improved the information in the files and increased the rate of compliance. It will also provide accurate information for the computer data base which is being implemented in 1984.

For the 1983-84 Registration year, the forms were reviewed upon submission. If information was missing or incomplete an owner was immediately notified. Exemptions were processed and Finance was notified to avoid erroneous penalty billing. As of the first penalty billing in October, 57% of all accounts were paid in full.

As landlords may not raise rents, evict tenants or petition to the Board (i.e. apply for an Individual Rent Adjustment) unless a property is legally registered, the determination of registration status is a vital one.

There have been several changes in the Regulations concerning registration status when a landlord has failed to provide information. If a landlord has supplied all information regarding rent levels but is unable or has forgotten to supply a piece of information, the property may be considered registered if it is otherwise in substantial compliance. For instance, if a landlord has failed to list when he/she obtained the property on the 1980-81 registration form, but answered all other items concerning rent levels and services, the property would be considered registered.

If, however, a landlord could not provide information necessary to determine rent levels, he/she must have signed a Declaration of Due Diligence

before June, 1983, or must submit a Request for Review of Registration Status in accordance with Section 801 of the regulations. The latter process is now in effect and requires a landlord to make a full search for any records and substantiate the effort made to obtain the missing information. If this is done, the Board may consider the property registered notwithstanding the absence of information.

Few cases have been processed at this time. Several requests are pending determination.

Registration information is available to the public and is kept in property files according to address. The Rent Stabilization Program has purchased a microcomputer and all registration information will be stored on a data base which will include the registration status and the maximum allowable rent ceiling. This system should be on line in 1984.

The hardware consists of a CompuPro 816C computer, a NEC letter quality printer, and three terminals. The system has 384 Kbytes of memory. The hard discs can store 20,000,000 characters with an additional 2,400,000 characters on floppy discs. The system should adequately serve the program's needs and is expandable.

Staff has reviewed the files and was prepared to begin entry of the registration information onto a source document. The recent court decision regarding the constitutionality of several aspects of the Ordinance may profoundly affect the type of information that needs to be recorded. Since it will take considerable time to prepare the source document and enter the information into the system it has been decided to postpone the preparation of the source document until it can be ascertained what information will be most relevant.

If the Supreme Court accepts the petition the information requested in the present Ordinance will be entered as it will take the court almost a year to come to a decision. However, if the Supreme Court does not accept the petition the Ordinance may be revised by the City Council and present information may be irrelevant. To avoid unnecessary work the implementation has been postponed.

The system is now being used as a word processor using the Word Star software program. The Hearing Unit information will be entered on the system by February.

HEARINGS UNIT

With the hiring of the current Senior Hearing Examiner, the staffing model for the Hearings Unit has been modified as follows: one Senior Hearing Examiner to oversee the operations of the Unit, one Clerk Typist to handle the calendar and noticing requirements of the law, one Clerk Typist to type and distribute decisions, and two part-time hearing examiners (who commenced employment in Mid-November 1983) to hear petitions.

The Unit has requested an additional position in order to provide more direct information regarding the hearings process to the general public, and to review incoming petitions for completeness and accuracy, and such other duties as may be assigned (for example, this individual would be responsible for the follow up of the petitions accepted by the Unit, and to log and record the results of the petition process).

The contract hearing examiner pool is maintained in order to ensure an adequate trained number of hearing examiners for use by the Program, and flexibility in the scheduling of hearings on petitions filed with the Program. The pay schedule for these contract hearing examiners has recently been revised in order to provide more adequate compensation for their participation in what is often a long and complex process.

The Senior Hearing Examiner has instituted monthly training sessions for hearing examiners engaged by the Program, and the Program's Hearing Examiner Training Manual has been updated. The Senior Hearing Examiner has also made himself available for one to one training sessions with hearings examiners regarding various aspects of the Ordinance, Regulations, and Administrative Procedures.

The Program Staff is now preparing Hearing Decisions on the Program's word-processor. This, in conjunction with the increased staffing model for the unit, and regular training now provided by the Unit for the hearing examiners, has markedly improved the quality of work product provided by this Unit.

The Program Staff has formalized the subpoena procedure in the administrative hearing process, and the problems previously occurring in this area have been resolved. In addition, the Program Staff is working closely with its computer programmer in order to develop a program model which will permit immediate review of petitions/appeals data by January of 1984.

In order to inform the general public of the services offered by this Unit, and to provide instruction as to the use of the hearings process, an Individual Rent Adjustment Brochure has been prepared for distribution by December 29, 1983, and weekly daytime Individual Rent Adjustment Workshops as well as monthly evening workshops are scheduled for the public's benefit. Questionnaires are distributed at these public workshops to allow the participants the opportunity to evaluate the workshop and make suggestions regarding future sessions.

The physical location of the Hearings Unit has been removed to a separate and more accessible area in the Program's basement offices, and a separate telephone line is being installed for calls related solely to the hearings process. Additional space has also been obtained at the 2000 Center Street

Court Building to allow for the scheduling of administrative hearings at that location by Mid-November of 1983.

The Senior Hearing Examiner has invested considerable time and efforts in developing uniform decision formats for use by the Program's hearing examiners in the Individual Rent Adjustment process. This has resulted in greater clarity and consistency in the decisions received by the parties to the process.

Finally, drafts of proposed petition forms, including revised instructions, have been developed for both landlord and tenant petitions, and have been submitted to the Board for review, comment, and public input.

HEARING UNIT

A Brief Summary of the IRA Process

Once a Landlord or Tenant Petition has been filed with the Berkeley Rent Stabilization Program seeking an adjustment in the rent ceiling level for a rental unit, the matter is scheduled for a pre-hearing conference with the parties and a hearing examiner assigned by the Rent Stabilization Program.

Each Party is notified of the pre-hearing conference date and encouraged to appear, either personally or by personal representative. If the parties can not settle the matter at the pre-hearing conference in accordance with the Berkeley Rent Stabilization Ordinance and Board Regulations, the matter is scheduled and confirmed for formal hearing.

At the hearing, both sides have a full opportunity to present their case. The petitioner must prove his or her case by a preponderance of the evidence. At the hearing, both parties have full due process rights, including the right to present evidence and argument, to cross examine, and the right to be represented in the presentation of their case.

The current fees charged for petitions is as follows: Landlord Petitions are \$120 for the first unit and \$60 for each additional unit named in the petition; Tenant Petitions are \$20 per unit for petitions alleging violation of lawful rent ceiling laws only, and \$120 for petitions requesting rent adjustments on a basis other than violation of lawful rent ceilings. Filing fees are non refundable.

The individual rent adjustment process is now undergoing extensive revision, and a summary of the staff IRA report is attached.

THE APPEALS PROCESS

If either the petitioner or the respondent is displeased with the hearing examiner's decision, the decision may be appealed within 30 days from receipt of the decision.

The appeal is considered by one of three appeals panels. The appeals panels are composed of three members of the Rent Stabilization Board. The appeals panel will render a decision which either affirms or modifies the hearing examiner's decision or the panel may remand the matter back to the Hearings Unit for additional consideration.

If either party takes exception to the decision of the appeals panel, he/she has the right to ask the panel to reconsider its decision. Such a request for reconsideration must be filed within seven days of receipt of the appeals panel decision.

After exhausting the remedies available through the administrative process, either the petitioner or the respondent has further recourse through the court system. Either party may file a writ of mandamus through the Superior Court.

THE ROLE OF THE BOARD



The composition and duties of the Rent Stabilization Board are delineated in Section 6 of the Ordinance.

Section 6. RENT STABILIZATION BOARD.

a. **COMPOSITION:** There shall be in the City of Berkeley a Rent Stabilization Board; the Board shall consist of nine (9) appointed Commissioners. The Board shall elect annually as chairperson one of its members to serve in that capacity.

b. **ELIGIBILITY:** Residents of the City of Berkeley are eligible to serve as Commissioners on the Board.

c. **FULL DISCLOSURE OF HOLDINGS:** All commissioners shall file with the City Clerk a verified statement listing all of their interests and dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years. Such statements shall be made available for public inspection.

d. **APPOINTMENT OF COMMISSIONERS:** Commissioners shall be appointed by members of the Berkeley City Council in accordance with the Fair Representation Ordinance (No. 4780-N.S.), within thirty (30) days after the adoption of this Ordinance.

e. **TERM OF OFFICE:** Commissioners' terms of office shall be in accordance with the Fair Representation Ordinance (City of Berkeley Ordinance No. 4780-N.S.).

f. **POWERS AND DUTIES:** The Board shall have the following powers and duties:

- (1) Set the rent ceilings for all rental units.
- (2) Require registration of all rental units under Section 8.
- (3) Publicize the manner in which the Base Rent Ceiling is established under Section 10.
- (4) To make adjustments in the rent ceiling in accordance with Sections 11 and 12.
- (5) Set rents at fair and equitable levels in view of and in order to achieve the purposes of this Ordinance.
- (6) To issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
- (7) Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
- (8) Report annually to the City Council of the City of Berkeley on the status of rental housing units covered by this Ordinance.
- (9) Request the City Council to remove rent controls under Section 6.q.
- (10) Administer oaths and affirmations and subpoena witnesses and relevant documents.
- (11) Establish rules and regulations for settling civil claims under Section 15.
- (12) Seek injunctive relief under Section 15.
- (13) Pursue civil remedies in courts of appropriate jurisdiction.
- (14) Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this Ordinance.
- (15) Hold public hearings.
- (16) Other powers necessary to carry out the purposes of this Ordinance which are not inconsistent with the terms of this Ordinance.
- (17) Except as provided in Section 6.n. of this Ordinance, the Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of Berkeley.

g. **RULES AND REGULATIONS:** The Board shall issue and follow such rules and regulations, including those which are contained in this Ordinance, as will further the purposes of this Ordinance. The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying.

The Board shall publicize this Ordinance so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Ordinance. The Board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Ordinance. The brochure shall be made available to the public.

h. **MEETINGS:** The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the Commissioners of the Board. The Board shall hold its initial meeting no later than July 15, 1980.

- i. **QUORUM:** Five (5) Commissioners shall constitute a quorum for the Board.
- j. **VOTING:** The affirmative vote of five (5) Commissioners of the Board is required for a decision, including all motions, rules, regulations, and orders of the Board.
- k. **COMPENSATION:** The Rent Stabilization Board shall be a working Board. In order to compensate Commissioners for their time and work performed as required by this Ordinance, Commissioners shall receive five dollars per hour, but in no case shall compensation for any one Commissioner exceed three thousand dollars in the first twelve month period or in any subsequent annual period that the Board is in operation for services rendered. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Board and filed with the City Clerk. Upon request by the Board the City Council may annually adjust the hourly compensation rate and the maximum annual sum received by the Commissioners.
- l. **DOCKETS:** The Board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.
- m. **VACANCIES:** If a vacancy shall occur on the Board, a qualified person to fill such vacancy shall be appointed in accordance with this Ordinance and the Fair Representation Ordinance (No. 4780-N.S.).
- n. **FINANCING:** The Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of Berkeley except as stated in this subsection, by charging landlords an annual registration fee of twelve dollars (\$12.00) per unit, per year in the first year of operation. After the first year, upon request by the Board the City Council may make reasonable annual adjustments in the fee. The Board is also empowered to request and receive funding when and if necessary, from any available source, except the City of Berkeley's General Fund, for its reasonable and necessary expenses, including but not limited to salaries and all other operating expenses.
- Notwithstanding the preceding provision of this Section, the City Council of the City of Berkeley shall appropriate as a loan to the Rent Stabilization Board sufficient funds for the reasonable and necessary expenses of the Board during the six month period following the adoption of this Ordinance, said funds to be repaid to the City by the Rent Stabilization Board within one year's period following the adoption of this Ordinance.
- o. **STAFF:** the City Manager is authorized to employ and pay staff for the Board, including hearing examiners and inspectors, as may be necessary to perform the Board's functions efficiently in order to fulfill the purposes of this Ordinance.
- p. **REGISTRATION:** The Board shall require the registration of all rental units covered by this Ordinance as provided for in Section 8. The Board may also require landlords to provide current information supplementing their registration statements.
- q. **DECONTROL:** If the annual average vacancy rate for all rental units in the City of Berkeley exceeds five (5) percent over a six month period, the City Council is empowered, upon request by the Board, at its discretion and in order to achieve the purposes of this Ordinance, to exempt rental units covered by this Ordinance from Sections 8, 10, 11, and 12 of this Ordinance. In determining the vacancy rate for the City of Berkeley the Board and the City Council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection (6.q.) coverage shall be reimposed if the City Council finds that the average annual vacancy rate has thereafter fallen below five (5) percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection (6.q.) the Board shall hold at least two public hearings.
- r. **CONFLICT OF INTEREST:** Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a Commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 12, where the Commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

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RENT BOARD OPERATIONS

The Board is responsible for the overall policy, which staff must implement and administer. However, staff has the responsibility of sharing information with the Board, researching policy-issues, and making recommendations to the Board to ensure that the policy-making body has the best data base from which to make legally sound policy decisions.

Likewise, it is incumbent upon the Board to use these staff services and obtain such information before making any policy decisions. If this is not done, the Board is forced to make decisions without the vital information so necessary to its policy making role.

The Director, while having certain responsibilities to the Board, is also an administrative staff person responsible to the City Manager for the day-to-day operations and administration of the Rent Stabilization Ordinance. Within these constraints or parameters, the Director:

1. Provides staff support to the Board;
2. Administers and implements the Rent Stabilization Program;
3. Communicates process, concerns and problems relating to the Program to both the City Manager and the Rent Stabilization Board.

PROPER PROCEDURES FOR WORK REQUESTS

The normal procedure for obtaining work products from staff or other departments is through the Board Secretary. If a committee has a proposal that would require additional work products from staff, the proposal should first go to the Board for discussion and approval. The Secretary can informally contact department(s) whose involvement is required to determine if it can be accomplished within its current work program and priorities. When a satisfactory resolution cannot be reached, the matter is referred to the City Manager for resolution.

BOARD AGENDA PROCEDURES AND BOARD MEETING PROCEDURES

The Rent Stabilization Program Chief prepares the agenda and accepts items from Board members, the Rent Stabilization Program staff, the City Manager and Communications from the public.

The Chairperson of the Board shall confer with the Program Chief at 11:00 a.m. on Tuesdays the week prior to the Board meeting to review the agenda items and materials prepared by staff.

Each Board member is encouraged to refer any non-routine agenda items to the appropriate Rent Stabilization Board committee so that issues may be properly weighed and considered prior to being placed before the full Board. However, each Board member has a right to put an item on the agenda, whether or not it has been previously referred to a committee.

The deadline for agenda materials to be submitted to the Program Chief is 8:00 a.m. on Tuesday, the week prior to the Board meeting.

Items which do not meet the deadline may be placed on the agenda as emergency items if a majority of the Board members vote to accept such an item. Late items should be delivered to the Program Chief as soon as possible so that there can be at least a preliminary review of its potential legal or administrative implications.

Agenda items from staff must be submitted to the Program Chief by 8:00 a.m. on the Monday of the week prior to the Rent Board meeting.

The Program Chief will include letters to the Rent Stabilization Board from members of the public as a special section of the agenda.

The Rent Stabilization Board agenda shall include reports for action and reports for information.

In order to facilitate the routine administrative activity of the Board, agenda items requiring action are divided into routine and non-routine items. Routine items are those which are non-controversial, reasonably straight forward and are easily understandable. The Program Chief will place items that do not require action under reports for information. Non-controversial items will be placed on the consent calendar. Items which are potential controversial, complex and require discussion will be listed as discussion or action items on the agenda.

In general, Information Items are included in the Agenda packet to increase Rent Stabilization Board Commissioners awareness of various matters relating to the Rent Stabilization Board program. At the beginning of the Rent Stabilization Board meeting, commissioners may request the opportunity to discuss or comment on any particular item. Such discussion or comment shall take place when the particular item is reached in the information section of the agenda.

Any new business to be considered by the Rent Stabilization shall be referred to the appropriate committee for discussion and recommendation. A report

back to the Board shall be made in two to four weeks. If a matter requires immediate action, it can be so voted by the affirmative vote of five commissioners of the Board as indicated in Section 6(j) of the Ordinance.

Meetings of the Rent Stabilization Board shall be adjourned at 11:00 p.m. unless a motion to extend beyond this time for a designated period and purpose has been approved by at least five commissioners.

All materials for Rent Stabilization Board members shall be distributed through the Board Secretary only. (This is to ensure that staff has a copy of all materials presented to the Board and to ensure the availability of such materials to the public).

Board meetings are held the 2nd and 4th Wednesday of each month unless otherwise scheduled.

BOARD COMMITTEES

There are six standing committees of the Rent Stabilization Board.

1. Annual General Adjustment Committee: Works with the Program staff to develop recommendations for the yearly general adjustment. Meets the 1st Thursday of each month.
2. Budget/Personnel: Works with Program Staff in order to develop Program budget, recommendations. This committee meets as scheduled.
3. Eviction Committee: This committee oversees Section 13 of the Ordinance. Committee reviews regulatory and administrative recommendations with regard to evictions. Meets 1st and 3rd Wednesday of each month.
4. Individual Rent Adjustment Committee: Oversees the administration and regulation procedures relative to Section 12, the hearing component of the program. Evaluates proposals that relate to this process. Meets 1st and 3rd Monday of each month.
5. Rent Registration Committee: Works with Program staff to develop administrative and regulatory procedures in order to ensure proper registration under the Ordinance. Meets 2nd and 4th Tuesday of each month.
6. Rules and Priorities Committee: This committee works with Program staff to develop procedure and regulation to carry out the administrative procedures of the ordinance and handles other special projects as assigned by the Board. Meets the 1st Monday of each month.

BOARD APPEALS PANELS

The Rent Stabilization Board has 3 appeals panels. These panels have regularly scheduled meetings and Board members are expected to serve on one appeals panel and to serve as an alternate on a second appeals panel.

THE ISSUES



RENT STABILIZATION BOARD ISSUES

There are a number of issues currently confronting the Rent Stabilization Program and the Rent Stabilization Board.

- The major task before the Program Staff and the Board at this time is the complete revision of both the administrative and regulatory components of the individual rent adjustment process. This task began with an evaluation of the current program, a Staff and Board committee critique of the study and additional recommendations, public comment relative to suggested procedural and regulatory changes and a public hearing on the issues on November 9, 1983. This is a lengthy and complex process that staff anticipates will be completed in two phases. Phase one will be completed and implemented by the end of February 1984. A summary of phase one of the process is attached for your information.
- Over the past 15 months the Board and Staff with considerable public input have developed draft regulations to cover religious institutions and fraternities and sororities, and dormitories of educational institutions. The regulations have not yet been finalized and adopted by the Board. Draft regulations will be considered by the Board in December.
- A number of issues relative to purchasing properties that are either unregistered or with rental rates that exceed the legal base rent ceiling in accordance with the law must be resolved. These issues have recently been transmitted to the City Attorney office for legal review and will subsequently be sent to the Board. In addition, staff has prepared a flyer to be distributed to the realtors throughout the city and to interested citizens.
- Staff is presently developing a seminar on real estate investment which will be held in February/March 1984. The purpose of the seminar will be to inform the Board, the staff and the community relative to the intricacies of real estate investment. This is essential given the complexity of a number of the issues being considered in the Individual Rent Adjustment Committee (i.e. minimum net operating income, indexing of net operating income, fair return on investment, etc.). An indepth understanding of real estate investment issues will assist the Board in its efforts to develop reasonable and fair regulations that are relevant to real estate concepts.
- Staff has begun the computerization of the program. For a variety of reasons, the Hearings Units petitioning process will be the first component of the program to be entered into the system. Staff anticipates that this component will be operating by February 28, 1984.
- The computerization of the general program will begin in February 1984 and will be completed by June 1984. The final general information computer program is presently being prepared.
- The Board is currently considering a report from the Eviction Committee relative to criteria to be used in determining the appropriateness of timeliness of Board intervention in eviction matters.
- Another issue currently before the Board is the certification of the base rent. Draft regulations are currently being discussed in the Individual Rent Adjustment Committee. It is anticipated that a process for certify-

ing the base rent level will be available by February 1984.

- The Board is also considering security deposit regulations with regard to Section 7 of the Ordinance. The Rules Committee has considered regulations in this area and has recommended that the draft regulation be adopted by the full Board in December 1983.

A copy of all draft regulations addressed in this report are attached for your information.

A SUMMARY OF THE REPORT ON THE
REVISION OF THE RENT STABILIZATION PROGRAM
INDIVIDUAL RENT ADJUSTMENT PROCESS

The purpose of this report is to provide the Rent Stabilization Board and members of the general public with an overview of the various aspects of the revision of the Individual Rent Adjustment Process.

Staff has determined that there are four general areas to be addressed in the course of undertaking the revision of this process.

1. Administrative procedures including staffing.
2. Revision of petition forms.
3. Board policy decisions.
4. Amendments, deletions and new Board regulations.

The general areas #3 and #4 will be covered in a future staff report which will be available January 9, 1984.

Staff has devoted considerable time and effort to this project. A comprehensive overview of the current process was prepared in May 1983. A copy of that study is available. Both the Individual Rent Adjustment Board Committee and Program staff have reviewed that report. A critique of the evaluation study from the committee and staff is included in this summary. Public comment is not included in this summary but will be summarized in the final report.

Over the past year there has been a number of requests for amendments and supplemental regulations. These recommendations will be included in the staff report that will be available January 9, 1984.

The Rent Stabilization Board and all interested citizens are encouraged to comment on any and all aspects of this report. It is the goal of the Program Administrator to develop a viable programmatic operation which is in concert with purposes and spirit of the Ordinance.

It is anticipated that major recommendations will be finalized and submitted to the full Board and the general public by February 1984 and that that process will be completely revised by April 1984.

PART I - THE EVALUATION STUDY - A summary of the recommendations.

PART II - HEARINGS UPDATE - Addresses the administrative procedures presently in place or recently revised in order to improve the quality of service provided by this component of the program.

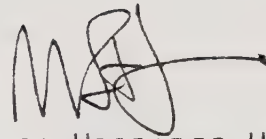
PART III - Outlines staff and Board comments with regard to the evaluation study.

The full report including copies of comments received to date from the general public is available for \$5 from the Board office. Purchasers of this report will receive the addendum at no cost.

MEMORANDUM

To: Rent Stabilization Board and Staff

From: M. St. John, Convenor, IRA Committee



Subject: Committee Comments on Schiff Report on Hearings Unit

Reference: "Evaluation of RSB Hearings Unit", Jage Schiff, 5/6/83

Date: Committee Meeting of 7/5/83

1. It would be useful if staff would prepare, as part of its analysis, a summary of the Schiff Report recommendations.
2. The committee recommends that there be a public hearing on proposed revisions to the IRA process sometime in August/September, or whenever staff analysis of the Report is complete.
3. The committee agrees with the report that both forms and instructions should be clear and complete. In particular, the committee believes that there should be a single master-format for all decisions making it clear to all involved what bases are being considered and what decision is made on each basis. A draft of one possible such master form is attached. It was noted that current forms have not been revised to include the debt service category.
4. On the question of the usefulness of pre-hearing conferences, it was noted that there were no statistics in the report on how many petitions have been settled in this way. This and other statistical information would be useful in evaluating the recommendations of the Report. Another example: statistics on the allocation of fees to owners or tenants.
5. On the fee structure, it was noted that there are two important questions: first, the structure of fees, and second the level of fees. The structure question relates to fees for various services and to the issue of how to handle multiple units. The level question relates to whether the fees should cover all costs of the hearings unit or whether the RSB should subsidize the hearings unit. It was agreed that counseling should be free.

There was a basic disagreement in committee on whether the fees should be related to costs (as recommended in the Report) or whether fees should be used as a redistributive mechanism, favoring one or another owner group.

There was discussion of the importance of the fee structure not discriminating unduly against "unbrella petitions" - those cases in which debt service or capital improvements apply to the entire building. It was pointed out that such petitions often take no more

staff time than a single-unit petition, yet may cost an owner many times more in fees with our current fee structure.

The committee agreed with the Report recommendation that appeals be subject to a single, fixed fee, refundable in case of reversal, remand, or modification.

6. The committee agreed that hearing examiner performance will surely improve as they gain experience and training. Therefore arrangements which move toward a smaller H.E. pool and closer ties to the hearing unit were favored. This might mean in-house examiners, but the committee didn't address that question specifically. The committee noted that review of decisions for consistency, clarity, and completeness by the senior hearing examiner is appropriate and beneficial.

7. It was noted that the Schiff Report is an "administrative process" report which did not purport to touch in any way on the underlying justice of the IRA process, only its procedural fairness and efficiency.

8. The committee strongly supports the Report recommendation that increased amounts of counseling be made available to petitioners, and agrees that many petitions could be avoided altogether if adequate counseling were available.

9. The committee commends Mr. Schiff for a useful report, notes that the performance of the hearings unit appears to have improved significantly over the past six months, and urges staff to develop plans for discussion and implementation of those proposals identified as likely to further improve the IRA process.

M.St.J., 7/28/83

A SUMMARY OF THE RECOMMENDATIONS CONTAINED IN THE SCHIFF REPORT

- FORMS - The forms need to be up-to-date and detailed as to rights of parties involved in the IRA process, the requirements of the Rent Law and the IRA process in general.
- FORMS ANALYSIS AND COUNSELING
Under this provision, a staff person trained in the IRA process and the Rent Law should examine all IRA petitions to assure that they satisfy the criteria of regulation 1207.
- CLERICAL SUPPORT
To alleviate problems, more clerical support is needed for the Hearings Unit.
- PRE-HEARING CONFERENCE HEARING
It is proposed that the prehearing conference be removed from the IRA process altogether.

Flexibility needs to be built into the system such that if the parties or the Hearing Examiner feel that the possibility of settlement exists at the hearing, the hearing may be stopped, and the parties allowed to do so.
- DECISIONS/APPEAL
There needs to be more communication between the Senior Hearing Examiner and the Examiners than has occurred in the past.

It has been suggested that the Appeals Panels need increased training and should place a higher priority on the making of decisions on appeal requests than it has in the past. The Senior Hearing Examiner should have the responsibility of creating workshops and materials to give the Appeals Panel a better knowledge of the IRA process and related law, and should also keep the Appeals Panels apprised of the current interpretations of the Law as they are created by the legal staff. The Appeals Panels should meet on a more regular basis in order to decide the appeals in a more timely manner.
- SENIOR HEARING EXAMINER
The Senior Hearing Examiner is responsible for training the Examiners. Much greater effort must be extended in this respect than has been the case in the past. The Senior Hearing Examiner should also be responsible for providing training in the IRA process and related law to the Appeals Panels.
- HEARING EXAMINERS
Only 1 or 2 Hearing Examiners should be responsible for IRA cases.
- ANALYST/COUNSELOR
The Hearings Unit is in need of an Analyst/Counselor who can devote his/her full energies to the needs of the Hearings Unit.

- CLERICAL SUPPORT

There should be one full time and one half-time individual involved with clerical and secretarial assistance to the hearings unit.

- FEES

A set nonrefundable filing fee of \$30 should be charged upon receipt of an IRA petition regardless of the number of units.

A hearing fee of \$80 should be charged for the first unit in an IRA hearing, and \$10 for each additional unit after that not to exceed \$40.

Parties who file an IRA petition, and then, before going to the hearing, reach a pre-hearing settlement, should be charged a nonrefundable \$15 fee in addition to the filing fee to submit a pre-hearing agreement for the Senior Hearing Examiner's approval. An additional \$5 should be charged for any additional units over one, not to exceed \$20.

Fast Track Agreements should be charged a nonrefundable fee of \$25 upon filing and a \$5 fee for any number of additional units.

A set fee of \$40 should be charged for appeals and this fee should be refunded to the appealing party in the event the Appeals Panel reverses, remands or modifies the decision of the Hearing Examiner.

PART II - THE HEARING UNIT UPDATE

Critical to the entire process was the hiring of a permanent senior hearing examiner in February 1983. Currently the staffing model for the unit has been increased in order to provide one Clerk Typist to handle the calendar and noticing requirements of the law; and one Clerk Typist to type and distribute decisions; (2) part-time hearing examiners have been selected and have been on board since Mid-November 1983. Staff has requested an additional position in order to provide more direct information on the hearing process to the general public, review incoming petitions for completeness of information, signatures, receipts, etc. and to perform other duties as assigned, i.e. follow up, logs, etc. The contract hearing examiner pool will also be maintained in order to ensure adequate staff if a surge of petitions are filed with the Board.

The Senior Hearing Examiner has instituted monthly training sessions for the contract hearing examiners. The Hearing Examiner Training Manual has now been updated. In addition the Senior Hearing Examiner is accessible for one to one training sessions with the examiners relative to various aspects of the Ordinance or Board regulations. Program Staff is now preparing hearing decisions on the word processor. Increasing the staffing model for the unit and providing regular in-service training for the contract hearing examiners has already improved the level of services offered by this unit. An IRA Brochure has been prepared for distribution by November 9, 1983. Weekly daytime IRA workshops and monthly evening IRA workshops are now being scheduled for the general public. Program staff has formalized the subpoena process and problems previously evidenced in this area has been resolved.

Program staff is working closely with the computer programmer in order to develop a program that will permit data on the status of petition/appeals as of February 1984

The physical location of the hearings unit has been removed to a more accessible area in our basement quarters. A separate line is being installed for calls relative to the hearings process. Space has been obtained at 2000 Center St. and since mid-November hearings have been held at that location. The Senior Hearing Examiner has spent considerable time and effort revising the decisions and to provide more clarity and consistency for those receiving decisions. Drafts of the proposed petition forms, including revised instructions have been developed for both landlord and tenant petitions. These drafts are included in this report for comment and suggestions. The Senior Hearing Examiner has also revised the pay schedule for the contract hearing examiners in order to provide adequate recompense for participating in a relatively complex and often lengthy process.

PART III

Staff comments with regard to the evaluation study are listed below:

On the whole Program staff perceived the evaluation study as comprehensive and thorough. There were several areas where opinions differed with the recommended changes outlined beginning on page 12 of the Evaluation Study.

FORMS - Copies of the draft revisions of the petition forms are included in this report. Most of the recommendations in the study have been incorporated into the revised petition forms.

FORMS ANALYSIS/COUNSELING

Staff recommends that the petition evaluation process be based solely on eligibility to file a petition; appropriate signatures completion of appropriate schedules and submission of receipts or other necessary documentation based on the type of petition filed. Staff suggests that the veracity of the information be left to the determination of the Hearing Examiner. Staff does not believe that the counselor should be involved in any settlement agreement other than to provide appropriate resources information to the parties. Staff concurs that more detailed materials should be prepared and distributed with regard to the various aspects of the process and concurs that more specific information about the process should be provided at the time that the petition is filed.

Recommendation: That the wording of Regulation 1207 should be modified to "eligible, incomprehensible or incomplete or ineligible" rather than including the term "erroneously completed."

CLERICAL SUPPORT - The Program Chief and the Senior Hearing Examiner have finalized the staffing model for the Hearing Unit.

PRE-HEARING CONFERENCE/HEARING

There is no consensus among program staff relative to the pre-hearing conference. On the one hand, this element permits the part-time/contract hearing examiner the opportunity to disseminate information, explain and define the issues, facilitate settlement and explain appropriate documentation necessary to support the petition. Other staff had reservations about the use of pre-hearing mediations as outlined in the Schiff Report. The Public Information Unit has received complaints from tenants and from some owners who feel that the hearing examiner were forcing settlement of the issues during the pre-hearing.

It was the consensus of the staff that mediation Hearings should be offered as a separate service of the Rent Stabilization Program; in the context that both parties agree that the issues can potentially be resolved through mediation.

Further, it is important that the settlement be viewed within the context of the Ordinance and Board regulations and that settlement agreements be reviewed with the clear understanding that parties to the action do not waive their rights and that decisions have to be consistent for similar situations. Staff is anxious to avoid the situation where an aggressive tenant or landlord has an unfair advantage over the other party. The senior Hearing examiner as well as some other program staff recommend maintaining the pre-hearing component of the process.

DECISIONS/APPEALS

Many of the issues raised relative to decisions have been rectified by the careful review that decisions receive before they are released. More intense training and the revised decision format have been instrumental in bringing consistency to the decisions.

APPEALS

A draft set of appeals regulations are attached to this report. However staff has presented at least one Board workshop on the individual rent adjustment process to assist the Board appeals panels. Another training session is scheduled in order to review the updated hearing examiner's manual. The three appeals panels now meet on a regular basis and will be encouraged to report our appeals decision in an expeditious manner in order to meet the 120 time unit imposed by the Ordinance.

FEES

The wording of Section 12 of the Ordinance which requires that "a reasonable per unit fee based upon the expenses of processing the petition be paid by the petitioner at the time of filing". The present petition fee schedules do not cover the processing cost. The Board must as a policy determine whether or not general registration revenue will continue to be used to subsidize with the studies estimate of the initial processing cost for all landlord/tenant petitions. There is the additional cost for the payment of the contract hearing examiner. It is anticipated that the employment of the part-time hearing examiners at an hourly rate will certainly impact on the cost incurred during the first quarter 7-1-83 to 9-30-83. General registration revenue is already used in part to subsidize the Hearing Unit in that the Senior Hearing Examiner, Noticing and Calendar Clerk and Intermediate Typist Clerk are paid from Rent Stabilization funds and as a matter of fact, the payments to the contract hearing examiners have never been contingent upon revenue received from the filing of petitions. Staff suggested that filing fees for both landlord and tenant petitions be both consistent and more aligned with processing and hearing costs paid out by the Board. For instance, staff and material costs are incurred irregardless of the type of petition filed. The Public Information Unit supports a filing schedule that is simplistic and far less complicated than the schedule recommended in the Schiff Report.

Staff anticipates further input from the Board and the general public will aid in developing a viable fee schedule.

Staff does not concur with the report's assessment of the fees for the Fast Track Petition. No recommendations at this time.

It was the consensus of staff that the appeals fee should remain at \$60 and that the fee for additional units should be eliminated.

Further, staff recommends that a fee of \$60 be assessed for reconsideration requests.

Further recommendations will be made in a subsequent followup report on the individual rent adjustment process.

For Immediate Release

Additional Information:
Jacqueline Foster, Chief, or
Rachel Richman, Public
Information Unit, 644-6181

RE: RENT PROGRAM COMPLETES PHASE ONE OF HEARINGS REVIEW

The Rent Stabilization Program has completed Phase One of a comprehensive review of the Individual Rent Adjustment hearings process.

The review is divided into three sections: Phase One involved administrative changes to improve and streamline internal procedures in evaluating individual requests from tenants and landlords for individual rent increases and decreases. Phase Two, which started last week with a public hearing, involves public input and discussion covering primarily policy issues in the IRA process. Phase Three will involve modifications of current regulations and policies governing the hearings process.

A number of significant changes have been instituted in the last ten months since the inception of Phase One. They include:

TRAINING: A comprehensive training program for the parttime and contract hearing examiners has been instituted. Hearing examiners now receive 50 hours of intensive group and individual training in administrative law and rent stabilization.

INCREASED STAFF: Two parttime hearing examiners have been hired to replace much of the current system which depends on contract hearing examiners (who work on a case by case basis). By adding parttime hearing examiners, the quality and response time for rendering decisions will increase.

COORDINATION WITH OTHER DEPARTMENTS: Procedures for coordinating activities with Codes and Inspection have been established. This will allow for speedy inspections of rental units to document housing code violations.

COMPUTERIZATION: Standard forms for issuing decisions have been developed. The computer is being programmed to track hearings to insure that they are handled in a timely manner.

EVENING WORKSHOPS AND HEARINGS: A monthly evening nuts-and-bolts workshop on the Individual Rent Adjustment process was recently added to the weekly daytime workshops to allow greater access to the information. Evening hearings are also now available.

BROCHURES: A brochure on the Individual Rent Adjustment process is currently being prepared.

RE: RENT PROGRAM COMPLETES PHASE ONE OF HEARINGS REVIEW

SUBPENAS: A process has been established to assist citizens using the hearings process to subpoena documents necessary to prove their case.

"I am very pleased with the changes that have been instituted" said Rent Stabilization Program Division Chief Jacqueline Foster. "The administrative changes have dramatically reduced many of the problems the Hearings Unit had in the beginning". She said she sees the completion of Phase One as the beginning of an overall review of administrative and policy issues in the Individual Rent Adjustment process. "We welcome ideas and input from the community about how we can improve services", Ms. Foster said.

701. SECURITY DEPOSITS

a. Any security deposit or payment, as that term is defined in Section 7 of the Ordinance, shall be placed by the landlord in an interest bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation until such time as it is returned to the tenant or entitled to be used by the landlord pursuant to Section 1950.5 of the California Civil Code.

b. The landlord shall clearly designate the account in a fashion that indicates that the monies deposited therein are held in a fiduciary capacity for the benefit of the tenant or tenants.

702. PAYMENT OF INTEREST ON SECURITY DEPOSITS.

a. Once each year in December, the landlord shall return to each tenant the actual amount of interest earned by said security deposit either as a rent rebate or cash payment. The landlord shall furnish the tenant with a clear statement indicating the amount of each deposit or payment held on behalf of the tenant, the rate of interest paid by the financial institution on the deposit or payment, the time period in which the interest was earned and the amount in dollars and cents of interest paid.

b. The tenant may request that the landlord provide verification that deposits or payments held on behalf of the tenant have been properly placed at a financial institution. Upon receipt of a written request from the tenant, the landlord shall obtain written verification from the financial institution that the landlord has deposited funds which are sufficient to cover all deposits or payments held on behalf of the tenant. Said verification shall include the name of the financial institution, branch and location, type of account, current rate of interest paid on said account and the names and capacities of persons holding title to the account.

c. If a landlord has not previously returned interest to which a tenant is entitled, the landlord shall return to the tenant all interest earned on said security deposit which has accrued from June 28, 1980, or the date of commencement of tenancy, whichever is later, until the date upon which the payment was made.

703. PAYMENT OF INTEREST WHERE FUNDS ARE NOT DEPOSITED

a. If the landlord fails to place the payment or deposit at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the landlord shall nevertheless pay interest on said deposit or payment to the tenant. The interest due the tenant shall be the greater of:

1. The passbook rate which would have been paid by such an institution had the monies been properly deposited;
2. The legal rate of interest established by the State of California;
3. The interest actually earned by the deposit or payment in the use to which the landlord put the monies.

b. Payment of interest pursuant to Regulation 703 shall not relieve the landlord of any of the penalties or disabilities otherwise imposed by Regulation or the Rent Stabilization and Eviction for Good Cause Ordinance and any amendments thereto.

401. HOUSING SERVICES IN GROUP LIVING ARRANGEMENTS; DEFINITION

The purpose of this regulation is to clarify the definition of "housing services" as that term is used in Berkeley Municipal Code Section 13.76.040.C. when such housing services exist in a rental unit occupied by a group living arrangement as defined in Regulation 555. In such a rental unit, housing services shall include all such services provided by the owner or landlord to the unit or the residents of the unit. Housing services do not include services provided by residents to other residents if there is no landlord tenant-relationship between any of the residents. Housing services also do not include services provided by someone other than the owner or landlord if the residents have mutually agreed to share the expenses of such services and no landlord-tenant relationship exists between any of the residents.

402. RENTAL UNIT OCCUPIED BY A GROUP LIVING ARRANGEMENT; DEFINITION.

For the purposes of Regulations 401, 555, 802 and 1003, a "rental unit" is a dwelling unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Each dwelling unit which contains such independent living facilities is a separate unit notwithstanding the fact that the same group living arrangement may occupy more than one unit.

555. GROUP LIVING ARRANGEMENT; DEFINITION.

For the purposes of Regulations 401, 402, 802 and 1003, a "group living arrangement" is a situation in which a covered rental unit is rented or available for rent by two or more persons who share a common household including the use of common kitchen and bath facilities and where rights of access to the various portions of the rental unit are determined by mutual agreement among the residents. An establishment such as a hotel, motel, inn, tourist home, rooming house, boarding house, dormitory is not a group living arrangement notwithstanding the fact that the residents of the establishment may share common eating, cooking or sanitation facilities.

802. REGISTRATION OF RENTAL UNITS OCCUPIED BY GROUP LIVING ARRANGEMENTS.

(A) Each rental unit which is occupied by a group living arrangement shall be registered by the owner or landlord of the

property parcel.

(B) If one or more residents of the group living arrangements has leased or rented the rental unit from the owner or landlord and sublets portions of the premises to other residents, said sublessor shall complete a supplemental registration statement on a form approved by the Board. The registration statement shall include the rent actually paid by each subtenant, the total rent collected from all subtenants and the total rent for the premises paid to the owner or landlord. The registration statement shall also set forth the housing services, if any, provided by the sublessor and the charges, if any for such services.

1003. BASE RENT AND CURRENT LAWFUL RENT CEILINGS FOR RENTAL UNITS OCCUPIED BY GROUP LIVING ARRANGEMENTS.

(A) The base rent and current rent ceiling for each rental unit occupied by a group living arrangement shall be determined in accordance with Section 13.76.100.A. of the Berkeley Municipal Code. The total rent charged the residents of each rental unit shall not exceed that which is lawful for the unit.

(B) If one or more residents of the group living arrangement has leased or rented the entire unit from the owner or landlord and sublets portions of the premises to other residents, the total rent demanded, received or collected by the sublessor shall not exceed that which is actually and lawfully due and payable to the owner or landlord of the premises. If the sublessor demands, receives or collects rent in excess of that actually due the owner or landlord, the sublessor shall be responsible to the subtenants for all such overcharges. If the sublessor acts as the agent or employee of the owner or landlord in demanding, receiving or collecting rent in excess of that lawfully due, or acts as a conduit for the transfer of such rent overcharges to the owner or landlord, said owner or landlord shall be responsible for all such overcharges.

Revised 11/22/83

~~Draft~~
Draft

RENT CEILING CERTIFICATION

(Returned to Committee 12/14/83)

A landlord or tenant who wishes to have the base rent ceiling and current rent ceiling for a covered unit determined may file a Petition for Rent Ceiling Certification. The petition shall be supported by documentation adequate to establish the rent history of the unit from June, 1978, to the date of the filing of the petition. The petition shall also be supported by documentation of the landlord's compliance with Measure I, Ordinance No. 5212 N.S., the Rent Stabilization and Eviction for Good Cause Ordinance as amended and the Regulations and Orders of the Board.

The Petition for Rent Ceiling Certification shall be heard by a Hearing Examiner according to the rules and regulations pertaining to individual rent adjustment hearings. The burden of proof shall be upon the petitioning party.

A landlord who is found to have violated the base rent and current rent ceilings for a covered unit shall be directed to reduce the rent and make refunds in accordance with Regulation 1271.

The fee for the filing of a Petition for Rent Ceiling Certification shall be the same as the fee for a Tenant Petition for Downward Adjustment.

**1984 ANNUAL
GENERAL ADJUSTMENT**



THE 1984 ANNUAL GENERAL ADJUSTMENT

In January of 1983 the Annual General Adjustment Committee and Board staff met to begin the development of the work plan in order to formulate the 1984 Annual General Adjustment.

The Board approved the Staff/Committee recommendation to commission Baar/Keating to update the 1982 Study of Operating and Maintenance Cost for residential rental property in Berkeley.

In order to expand the data case, as a part of the study program, staff conducted a survey of utility expenses in order to more adequately determine the appropriate ratio of utility costs to operating/maintenance expenses for property owners. Staff for the first time since the inception of the program, also surveyed a random sample of tenants relative to utility cost and maintenance/repairs.

From August to mid-October, 1983 the Board conducted three public hearings on the issue of the 1984 Annual General Adjustment and the committee met bi-weekly during August, September and October to review the data and develop recommendations for Board/Public review and comment.

A copy of the study, the AGA Committee Report, the Minority AGA Report, the preliminary and final staff report as well as the 1984 order adopted by the Rent Stabilization Board on October 26, 1983; are included for your information.

BERKELEY RENT STABILIZED PROPERTIES

1983 OPERATING COST STUDY

by

KEN BAAR AND DENNIS KEATING

August 14, 1983

(Revised, October 20, 1983)

PREFACE

The authors gratefully acknowledge the assistance of Miguel Iglesias, Nancy Stolz, Martin Gellen, Marian Wolfe and the staff of the Berkeley Rent Stabilization Board in the preparation of this report. We also appreciate the cooperation of those Berkeley landlords who participated in the utility cost survey and those Berkeley rent management companies which cooperated with our survey research.

Technical corrections, rather than substantive changes to the report, were made in a September 8, 1983 revision of this report. This version contains substantive as well as technical revisions in response to public comments.

Substantive revisions and additions are contained on pages (3), (7), (7a), (13), (14), (15), (16), and (17).

INSTRUCTIONS:

Please complete Part A regardless of who pays utilities expenses. If you do not pay utilities, please check #A.1.d. and 2.b. and return the Survey to the Rent Board. All information furnished is confidential.

(Only provide information for the above property address)

- A. 1. Indicate whether owner(s) or tenant(s) pay for Gas and Electricity. (CHECK applicable boxes only):

- a. Owner(s) pays all Gas and Electricity. ☐
- b. Owner(s) pays for all Gas and Tenant(s) pays all Electricity. ☐
- c. Owner(s) pays all Electricity and Tenant(s) pays all Gas. ☐
- d. Tenant(s) pays for all Gas and Electricity. ☐
- e. Tenant(s) pays Gas and Electricity, except for
- (1) Common area(s) Electricity. ☐
(Ex: hallways, laundry, garage, outdoor lights)
- (2) Other (PLEASE EXPLAIN). ☐

2. Indicate whether owner(s) or tenant(s) pays for Water and Sewer.

- a. Owner(s) pays for Water and Sewer. ☐
- b. Tenant(s) pays for Water and Sewer. ☐

INSTRUCTIONS:

1. Do not complete Part B unless you have a complete record of your total Gas/Electricity and Water/Sewer expenses for 1982.
2. If possible, please provide separate costs for Gas and Electricity and Water and Sewer.
3. If you are authorizing the Board to obtain the total of your 1982 billings, check this box, and fill out the authorization form on the following page, item C.

☐

- B. 1. If owner(s) pays for all or part of Gas and Electricity (Boxes 1.a,b,c and e in Part A), please indicate your total costs for the year 1982:

	<u>GAS</u>	<u>ELECTRICITY</u>	<u>GAS & ELECTRICITY</u> (Combined)
<u>TOTAL FOR 1982:</u>	\$ _____	\$ _____	\$ _____

2. If owner(s) pay for all Water and Sewer (Box 2.a. in Part A) please indicate your total costs for the year 1982:

	<u>WATER</u>	<u>SEWAGE TREATMENT</u>	<u>SEWER CHARGES</u>	<u>TOTAL</u> (Combined)
<u>TOTAL FOR 1982:</u>	\$ _____	\$ _____	\$ _____	\$ _____

C.

P. G. & E. AND E.B.M.U.D. RELEASE FORM

MAIL Directly to:

RENT STABILIZATION PROGRAM
Attn: Judith Little
2180 Milvia Street
Berkeley, CA 94704

-
1. ☐ I am P.G.&E.'s customer of record for utility service for Account Number _____. I am authorizing the Berkeley Rent Stabilization Board to receive a Statement of Account showing usage and charges for 1982. The information will remain confidential.
2. ☐ I am E.B.M.U.D.'s customer of record for utility service for Account Number _____. I am authorizing the Berkeley Rent Stabilization Board to receive a Statement of Account showing usage and charges for 1982. The information will remain confidential.

(Name)

(Phone)

(Date)

APPENDIX A
CONSUMER PRICE INDEXES
PACIFIC CITIES AND U. S. CITY AVERAGE

ALL ITEMS INDEXES
(1967=100 unless otherwise noted)

JUNE 1983

CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS

	INDEXES			PERCENT CHANGE				
			JUNE 1983	YEAR ENDING		TWO MONTHS ENDING		MONTH ENDING
	JUNE 1982	MAY 1983		MAY 1983	JUNE 1983	MAY 1983	JUNE 1983	JUNE 1983
U. S. City Average	290.6	297.1	298.1	3.5	2.6	1.3	0.9	0.3
Los Angeles-Long Beach-Anaheim	290.1	292.0	293.6	1.7	1.2	1.7	1.4	0.5
[San Francisco - Oakland	304.6	-	303.0	-	-0.5	-	1.2	-
Honolulu, Hawaii	269.0	-	271.4	-	0.9	-	-0.5	-
San Diego, California	-	332.0	-	0.9	-	1.4	-	-
Portland, Oregon	-	288.5	-	2.3	-	1.3	-	-
Seattle - Everett, Washington.	-	300.9	-	-0.1	-	1.0	-	-
Anchorage, Ak. (Oct. 1967=100)	-	262.5	-	-0.5	-	0.6	-	-

CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS

	INDEXES			PERCENT CHANGE				
			JUNE 1983	YEAR ENDING		TWO MONTHS ENDING		MONTH ENDING
	JUNE 1982	MAY 1983		MAY 1983	JUNE 1983	MAY 1983	JUNE 1983	JUNE 1983
U. S. City Average	290.1	296.3	297.2	3.4	2.4	1.1	0.8	0.3
Los Angeles-Long Beach-Anaheim	293.9	292.1	292.1	0.5	-0.6	0.9	0.7	0.0
San Francisco - Oakland	303.4	-	298.6	-	-1.6	-	1.3	-
Honolulu, Hawaii	268.9	-	273.4	-	1.7	-	-1.3	-
San Diego, California	-	314.8	-	-2.6	-	-0.2	-	-
Portland, Oregon	-	283.8	-	1.5	-	0.3	-	-
Seattle - Everett, Washington.	-	290.4	-	-2.3	-	-0.1	-	-
Anchorage, Ak. (Oct. 1967=100)	-	254.7	-	-1.3	-	0.3	-	-

Bureau of Labor Statistics - San Francisco, CA 94102

July 22, 1983

CORRECTION: Last month the U.S. CPI-W percent change for the year ending April 1983 was erroneously listed as 4.0%. The correct figure is 3.9%.

The next CPI will be released on August 23.

IMPORTANT NOTICE FOR USERS OF LOCAL CPI INDEXES

Because they are based on smaller samples, local area indexes are subject to substantially more sampling and other measurement error than national indexes. BLS strongly

07/22/83

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS
SAN FRANCISCO-OAKLAND
ALL ITEMS LESS SHELTER, 1967=100

YEAR	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	ANNUAL AVERAGE
1975													
1976			161.5			163.0						160.3	
1977			171.4			176.3			165.7			167.5	163.8
1978		182.0		185.7		189.6		192.4	179.2			180.3	175.7
1979		199.6		204.2		208.9		212.7		196.1		196.2	189.7
								216.0				219.3	209.1
1980		225.8		232.7		237.7		241.5		243.8		244.0	236.5
1981		248.0		252.1		255.9		259.7		262.9		265.8	256.5
1982		270.4		271.8		277.7		279.2		281.4		278.2	275.9
1983		278.3		280.6		284.5							

CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS
SAN FRANCISCO-OAKLAND
ALL ITEMS LESS SHELTER, 1967=100

YEAR	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	ANNUAL AVERAGE
1975													
1976			161.5			163.0						160.3	
1977			171.4			176.3			165.7			167.5	163.8
1978		182.4		185.2		189.3		192.4	179.2			180.3	175.7
1979		199.4		204.4		209.9		213.1		195.2		195.2	189.3
								214.8				218.1	209.0
1980		226.2		232.2		238.0		242.1		245.2		245.2	237.0
1981		249.9		254.5		258.0		262.5		265.6		267.6	258.7
1982		272.2		273.7		279.5		280.2		282.3		279.3	277.4
1983		278.8		281.5		285.7							

IV. OVERALL INCREASES AND DECREASES IN OPERATING AND MAINTENANCE EXPENSES

Summary of June '82 - June '83 Operating Cost Increases and Decreases

<u>Rent Adjustments Required</u>			
	<u>Component Weight</u>	<u>Increase 6/82 - 6/83</u>	<u>Adjustment Required</u>
1. Property Taxes	.065	2%	0.13%
2. Library Taxes	.0064	7%	0.04%
3. Refuse Collection	.019	0%	0%
4. Water	.011	0%	0%
5. Sewer Maintenance	.012	0%	0%
6. Sewer Treatment	.0095	8%	0.08%
7. Business License Fee	.0063	9%	0.06%
8. Registration Fee	.0086	0%	0%
9. Insurance	.035	4.2%	0.15%
10. Management	.06	4.75%	0.29%
11. Maintenance, Repairs and Others	.14	2.8%	0.39%
12. Fire Inspection Fee	New		0.13%
13. Street Lighting and Landscaping Assessment	.0127	0%	0%
<hr/> TOTAL (excluding gas & elec.)			1.27%
14. Gas - All	.052	10%	0.52%
Hot Water Only	.023	10%	0.23%
15. Electricity - All	.062	-7%	-0.43%
TOTAL Common Areas Only	.034	-7%	-0.23%

Rent Increases Required to Cover Cost Increases
Occurring After July 1, 1983

	<u>Component Weight</u>	<u>% Increase</u>	<u>Rent Adjustment Required</u>
Library Tax	.0064	5.4% ^a	.03%
Refuse Collection	.019	22.0%	40%
Water	.011	20.0%	.22%
Sewer Maintenance	.012	29.0%	.35%
Business License	.0063	20.0%	.13%
Ambulance Fee	new	\$ /unit/yr.*	
<hr/>			
Total			1.13%

* The City Council has authorized the imposition of the fee, but the amount of the fee still has not been calculated.

V. CONCLUSION

The lowest possible increase would be 0.35% (if the CPI All Items is used and the M&R ratio is reduced from 0.20% to 0.14%). The highest possible increase would be 2.39% (if the CPI All Items Less Shelter is used, the M&R ratio is not reduced, and the July 1, 1983 rate increases are included).

Based upon the available data

- 1981 IRA Petitions - 0.14
- 1980 Marian Wolfe Sample - 0.08
- 1982 IRA Sample Range - .057 - .109
- 1982 Management Co. data - .198

there is a definite data base available to support reconsideration of the last year's maintenance and repairs weight of 0.20%. The above sources for 1980-1982 provide a range of .06 - .198. Even the "high" (as opposed to median) range for IREM's 1982 sample was only .062 - .141.

We recommend that the Board re-weight maintenance and repairs. Until better data is available, we recommend that the Board adopt as a weight the 1981 I.R.A. maintenance and repair weight of .14 -- which is approximately midway between the data from the other sources. However, this recommendation is subject to the caveat that for a variety of reasons none of the data sources are adequate for accurately determining average ratios.

Whichever weight is used, there is no available data on actual increases in maintenance and repairs expenses for Berkeley landlords. Therefore, like last year we assume that this weight increases at the same rate as inflation and use the same index as was used last year (CPI All-Items Less Shelter) to calculate the percentage cost increase. Again, as in last year's report, we recommend further research in the area of maintenance and repair expenditures.

i. Fire Inspection Fee

Effective July 22, 1982, the City instituted 2 fire inspection fees of \$18.75 per quarter hour.⁸ The inspector is required to conduct annual inspections.

Operating Cost Ratio

The average inspection typically takes one quarter hour for buildings of 4-8 units according to the Berkeley Fire Department. The cost would be \$4.68 per year per unit or 0.13% of annual rents, if an inspection took 15 minutes.⁹

j) Gas and electricity -

8/ Ordinance No. 5462 - N.S.

9/ Annual rents for July 1981 are assumed to be 9% above the July 1981 average of \$280 reported in last year's study (pII 2)

Electricity rates -

Electricity rates actually decreased from June 1982 to June 1983 as follows:

	<u>JUNE 1982</u>	<u>JUNE 1983</u>
<u>Lifeline (Tier I)</u>	\$0.018/kwh	\$0.016/kwh
<u>Tier II</u>	0.038	0.036
<u>Tier II</u>	0.066	0.062

The average rate decrease is approximately 7%.

Gas Rates -

Gas rates increased from June 1982 to June 1983 as follows:

	<u>JUNE 1982</u>	<u>JUNE 1983</u>
<u>Tier I (Lifeline)</u>	\$0.40/therm	\$0.44/therm
<u>Tier II</u> (Lifeline Allowance Equivalent)	0.65	0.72
<u>Tier III</u>	0.79	0.87

The average rate increase is approximately 10%.

Due to the fact that in some years rates for consumption at different tiers increase or decrease at markedly different rates further research is needed on actual consumption (as opposed to operating cost ratios.)

Landlords or their agents who could be located were then contacted by Wolfe and her research assistants and interviewed in 1981. In Berkeley, Wolfe contacted 54 owners of buildings with 1-49 units and successfully interviewed 32. Wolfe does not indicate how many units there were in her Berkeley sample or how many were professionally - managed.

Wolfe's sample revealed the following. These owners had a 1980 median operating expense ratio of .40. This compares with the .44 average operating expense ratio for 1981 which was estimated in last year's report. However, Wolfe's respondents had a median ratio of .08 for maintenance and repair expenses (the same as the average found in the 1981 Berkeley Multiple Listings). The range of 1980 expenses for maintenance and repairs was compared to this year's 1981 range of .03-.37. When asked about patterns of maintenance, in comparison with former years, Berkeley landlords responded as follows:

Performs more maintenance	19%
Performs the same amount	59%
Performs less maintenance	22%

Wolfe makes the following conclusion concerning maintenance and repairs in Berkeley as of 1981:

Have owners reduced maintenance in regulated cities in order to maintain their profit levels? Survey responses covering owners' attitudes and 1980 expenditures address this question. First of all, more owners in Berkeley felt that operating expenses were increasing faster than rental income. Three-quarters of the owners interviewed in Berkeley said this was the trend, compared with sixty percent in Hayward, fifty-five percent in Oakland, and about half in Fremont. However when asked whether they had increased maintenance and repair work, kept it the same or reduced it, Berkeley owners were only a little less likely to say that they had reduced their efforts, and this difference is not significant. Table 6.4 lists owners' responses to this question and shows that over three-quarters of owners in each city said they now do the same or more maintenance.

What does an examination of operating expense data indicate? Table 6.5 compares operating expense data across the four cities and shows that the Berkeley sample had a slightly lower median operating expense ratio. This difference could result from reduced expenditures on maintenance and repairs. However, this is not the case as evidenced by data presented in Table 6.5. When Berkeley properties are compared with those in the other three cities, we observe no difference in the percentage of

revenues spent on maintenance and repairs. One can conclude that, in the short run, regulated owners in the sample do not feel they are reducing maintenance and repairs, and the financial data available substantiate these perceptions.

Wolfe's findings suggest that Berkeley landlords spent considerably less (at least as of 1980) on maintenance and repairs than was estimated in last year's report. However, her sample size is small and there is no data on the condition of the buildings or on whether they were professionally - managed, so this data is not necessarily directly comparable to the IRA data.

3) IREM Survey (1982)

The 1982 (IREM) Income/Expense Analysis contained the following data concerning Maintenance Expenses (including Repairs, Security, Grounds Maintenance, and Painting/Decorating) for San Francisco buildings with 12 or more units:

TABLE 6
IREM MAINTENANCE & REPAIRS EXPENSES (1982)

<u>TYPE OF BUILDING</u>	<u>MAINTENANCE-REPAIRS/INCOME</u>
Elevator Buildings (Unfurnished)	.104
Low-Rise Buildings (12-24 units) (Unfurnished)	.057
Low-Rise Buildings (25 or more units) (Unfurnished)	.092
Garden Type Buildings (Unfurnished)	.109

Berkeley Management Company Survey

One management company submitted operating cost and income data on the condition that its source not be disclosed. (Also, the data is not audited.) That company manages more than 100 units.

The data indicated a maintenance and repair to income ratio of 19.8%.

One company submitted data for two buildings containing a total of 12 units and another submitted data for one building containing about 100 units. We do not believe that such small samples can be considered as useful for indicating average ratios.

1) IRA Sample (1981)

Last year 41 IRA petitions covering 284 units dating from 1980 through July 1982 were analyzed. The weight for maintenance and repairs in 1981, including owner self-labor, was 13%. All IRA data is subject to tenant challenge and hearing examiner review. Therefore, it is more reliable than other data which is not subject to this type of public scrutiny.

The IRA data has limitations. It is not a random sample. It only represents those owners who petition for an IRA and complete Schedule A, Part I, usually for rent increases to maintain net operating income or for capital improvements. It cannot be determined to what extent these buildings represent normal or abnormal maintenance. However, many were recently renovated which would influence M&R expenses. Many petitions were unusable for a variety of reasons, e.g. incomplete data (income or expenses), self-contradictory data, unusual vacancy rates due to special circumstances, aggregation of commercial and residential rental income and expenses, and mistaken inclusion of capital improvement expenses among maintenance expenses.

This year's sample consists of all IRA petitions filed between August 1982 and April 1983. Eighteen (18) IRA petitions covering 62 units proved to be unusable for the reasons indicated above.

The remaining sample consists of 33 buildings covering 348 units distributed by size as follows:

TABLE 4
IRA SAMPLE (1982 - 1983)

<u>BUILDING SIZE</u>	<u>BUILDINGS</u>	<u>TOTAL # UNITS</u>
(# UNITS)		
1-4	16	43
5-9	7	50
10-20	2	29
21+	8	226

It is noteworthy that 30% of the buildings and 70% of the units in this sample consists of units in larger buildings with 10 units or more. However, almost all of these buildings are owner-managed. Therefore, this sample can be compared to professionally-managed buildings.

Thirty-two (32) buildings covering 345 units reported maintenance and repair data for 1981, the same period used last year. Only 5 buildings (covering 72 units) reported M&R data for 1982, so only the 1981 data is reported here. Owner self-labor for maintenance itemized in Schedule A, Part II, is included. The 1981 IRA weight from this sample for M&R expenses is 14% (compared to the 13% reported last year).

TABLE 5
1981 IRA MAINTENANCE & REPAIRS (M&R) WEIGHT

<u>BUILDING SIZE</u>	<u>1981 M&R WEIGHT</u>	<u>1981 M&R WEIGHT RANGE</u>
1-4	0.17	0.03 - 0.37
5-9	0.11	0.04 - 0.37
10-20	0.075	0.03 - 0.12
21+	0.13	0.04 - 0.19

2) MARIAN WOLFE STUDY (1980)

Dr. Marian Wolfe, Assistant Professor in the Business School and Department of Urban and Regional Planning at the University of Wisconsin (Madison), recently completed her Ph.D. dissertation entitled "The Actual and Perceived Profitability in Rental Housing - A Disaggregate Analysis". Professor Wolfe's research was funded by the University of California (Berkeley) and the U.S. Department of Housing and Urban Development.

Wolfe's study researched landlords and middle-income rental housing in four East Bay cities - Berkeley, Fremont, Hayward and Oakland. In her research into the profitability of rental housing, Wolfe chose representative census blocks in each city and then attempted to interview all of the owners. Her detailed survey questionnaire asked owners for their 1980 income and expenses, including maintenance.

In Berkeley, Wolfe chose Census Tract No. 4224 (bounded by Spruce, University, Grove and Cedar), consisting of 2,086 housing units, of which 92% were renter-occupied in 1970. 29% were in 1-4 unit buildings and 70% were in buildings with 5 or more units. Wolfe's criteria for choosing units to be surveyed were: distribution by property size and age and recency of purchase, higher percentage of renters than the city's average, median renter income and gross median rent the same or just below the city's median, and percentage of Black households below the city average.

g. Management

In last year's study, the following sources indicated the following management cost/rental income ratios: (weights may be expressed in terms of percentages by multiplying by 100; e.g. .040 weight = 4.0% ratio).

IRA Petitions	.04	• (4%)(excluding landlord Self-Labor)
MLS	.025 - .04	(2.5% - 4%)
Berkeley Management Company Survey	.07 - .09	(7% - 9%)
IREM (San Francisco and San Jose	.037 - .06	(3.7% - 6%)

We recommended and the Board adopted a weight of 0.07 (7%) for Management. We stated: "However, it should be noted that any ratio chosen could easily be debated based on the data provided."

This year we have analyzed the following data:

1) IRA Petitions

Of the IRA petitions filed between August 1982 and April 1983, 25 covering 155 units provided data for Management expenses for 1981. Unlike last year, we have included entries on Schedule A Part I for Management and added any Self-Labor on Schedule A, Part III for Self-Management (and assumed that these were two separate items). Almost all of these buildings had no listed management agent. Therefore, it is assumed that they are self-managed by the owner. Most of these IRA petitions included expenses for self-labor for management. The total Management weight for this sample for 1981 was .06.

2) IREM Survey (1982)

The 1982 IREM Income/Expense Analysis contained the following data concerning Management expenses for San Francisco buildings with 12 or more units:

TABLE 3

IREM SURVEY - MANAGEMENT EXPENSES

<u>TYPE OF BUILDING</u>	<u>MANAGEMENT FEE/INCOME RATIO</u> (MEDIAN)
Elevator Buildings (Unfurnished) (11 buildings, 1,225 apartments)	.066
Low-Rise Buildings (12-24 units) (Unfurnished) (11 buildings, 173 apartments)	.050
Low-Rise Buildings (25 or more units) (Unfurnished) (18 buildings, 1996 apartments)	.049
Garden Type Buildings (Unfurnished) (22 buildings, 2,523 apartments)	.049

Industry averages for apartment cost and the industry standard are closer to 6%, than last year's estimate for Berkeley of 7%. The 7% estimate was based on interviews with management companies, but no verified data. The management companies indicated that due to the registration and reporting requirements associated with rent control the management burden in Berkeley was greater than average.

A 6% ratio may be more appropriate than last year's 7% estimate. Most Berkeley properties are owner managed. Therefore, the management cost is primarily an imputed costs. Generally, in situations where this cost is imputed for rent control purposes under local controls in the U. S. a 5 or 6% ratio is used. Also, although rent control may increase reporting requirements for owners, at the Oct. 6 public hearing, several owners testified that rent control was leading to a significant reduction in turnover of tenants. This testimony accords with national experience under rent controls. To the extent that a reduction in turnover has taken place, a reduction in management costs (or labor) associated with rerenting apartments has also taken place. Rerenting typically involves the performance of a number of minor maintenance chores as well as the time devoted to interviewing prospective new tenants and preparing and discussing new rental agreements.

The added administrative costs attributable to Berkeley's registration requirements, the 1981 Berkeley IRA weight of .06 and the 1982 IREM weight range of .049 - .066 would support continued use of a management expense weight of .07. As indicated in last year's report, this weight could range from .05 - .09.

h. Maintenance and Repairs

The 1982 AGA Study indicated the following alternative weights for maintenance and repairs (M&R) expenses:

1. IRA petitions	0.13
2. Management Company Survey (only one included)	0.21
3. Berkeley Multiple Listing Service	0.08
4. Institute of Real Estate Management (IREM) (Western Region, 12-24 unit buildings only)	0.19

These figures included the costs of on-site resident managers and owner's self-labor.

We recommended and the Board adopted 0.20 as the "weight" for M&R. There was concern expressed that this weight was too high because it represented only the M&R weight for larger, professionally - managed buildings which do not represent the majority of Berkeley's rent stabilized housing stock. Furthermore, all the data was from only one management company.

We recommended a citywide survey of landlords' M&R expenses. Since this did not prove to be feasible, we will use available data for the purpose of comparison. The following sources used last year are again analyzed:

IRA petitions with adequate M&R data filed between August 1982 and April 1983;

The Institute of Real Estate Management (IREM)'s 1982 Income Expense Analysis Report; and

A survey of Berkeley rental management companies.

In addition, a recently- completed Ph.D. thesis which surveyed Berkeley

to the 11% rate increase. However, a year to year comparison is not possible, because bills for buildings with four units or less are still not available. It is certainly possible that some of the costs associated with the rate increase were offset by decreases in service used. Further, further adjustments may be made by owners as the full impact of the new rate increase is realized.

For the purpose of this report it is recommended that 22% be used as an estimate of the average rate increase. However, for this particular item it would be appropriate to recalculate the actual cost increase next summer when bills for the full fiscal year 1983-1984 are available and can be compared with bills of the prior year, in the event the Board decides to take into account this cost increase in calculating overall cost increases that are estimated pursuant to the Board's 1984 General Adjustment.

b. Property Taxes

For the purposes of calculating average property tax increases, the rate of increase applicable to properties which have not sold - 2% per year - is used. Last year's study explains the basis of this calculation.

c. Library Assessments

Effective July 1, 1982, the library assessment rate increased by 7%. ^{7/}

d. Registration Fees

Effective August 1982, registration fees were increased from \$12 to \$30 per year per unit, an increase of 150%. This increase was taken into account in the 1983 general adjustment.

There has been no increase in the Board's registration fee since August 1982

e. Insurance

Last year it was assumed that insurance costs increased at the same rate as the CPI for All Items Less Shelter.

As was indicated in last year's report (p. IV-17), increases in fire insurance costs are largely determined by increases in building replacement costs. Failure on the part of an owner to increase insurance coverage to reflect replacement cost increases may result in the owner becoming a "coinsurer" of the property with the insurance company only liable for a percentage of the loss equal to the insured value to replacement value ratio for the property. (For example, if a property with a replacement cost of \$100,000 is only insured for \$75,000, then the insurance company would only be required to reimburse an owner for 75% of a fire loss.) Therefore, an owner who wants to maintain full coverage for fire losses, will adjust insurance coverage to reflect increases in replacement costs. Furthermore, this practice may be required by lenders.

<u>7/</u>	<u>YEAR</u>	<u>RATE</u>
	1980-81	\$0.023/sq. ft.
	1981-82	\$0.02461/sq. ft.
	1982-83	\$0.0263/sq. ft.

Insurance agents in advising their clients on replacement cost increases base their estimates on replacement cost manuals. Therefore, for this particular type of cost these manuals provide a more precise estimate of cost increases than the Consumer Price Indexes, which represent a "market basket" of costs.

The "Marshall and Swift Publication Manual", which is widely used by insurance brokers in the Bay Area, contains quarterly estimates of increases in replacement costs. It indicates an increase of 4.2% in replacement costs from July 1982 to July 1983 for wood frame buildings. (The rate of increase was slightly lower for other types of buildings.) Other manuals or insurance company estimates which may indicate other rates of increase in reproduction costs are also used by insurance agents. These sources indicated similar rates of increase.

However, this recommendation is made subject to the caveat that although it may be "sound" business practice to increase insurance coverage according to the estimates in the manual, this index (or any other index) may not accurately reflect how much owners actually do increase their fire insurance coverage.

f. Sewer Treatment

In December 1982, EBMUD, raised its sewer treatment rates and changed some of its methodologies for calculating charges. As a result a small percentage of consumers have experienced cost decreases, while the majority have incurred increases of varying percentages.

The sewer treatment rate for buildings with 5 units or more was raised from \$0.37 to \$0.40 per water unit consumer, an increase of 8.1%. However, the minimum monthly charge per building (on a single water meter) was lowered from \$13.70 to \$11.25. As a result the owners of small buildings, 5 and 6 units, with average consumption levels, experienced cost decreases.

The rate for buildings of four units or less was changed from a flat rate per apartment unit, regardless of actual water consumption levels, to a combination per apartment unit charge and charge of 11.9¢ per water unit consumed. This change resulted in rate increases of approximately 8% for average consumption levels. For units with above average consumption levels, the rate increases were greater, while for units with lower consumption levels they were lower.

For the purpose of this report, it is recommended that 8% be used as an estimate of the average cost increase. However, it should be noted that some owners do not pay for sewer treatment or have higher percentage increases than the average. Without data on the number of apartments in each size building, average consumption levels for single family houses which are rented, and the percentage of units for which the tenants pay for sewer treatment, a highly precise estimate of the average cost increase cannot be made.

However, no matter what percentage average rate increase within the 8% range is estimated, the rent adjustment for this cost increase is very small due to the low weight (.0095) for this cost component. (e.g., an 8% estimate of the cost increase justifies a .08% rent increase. A 5% estimate of this cost increase would justify a .05% rent increase.

TABLE 2

RECALCULATION OF OPERATING COST RATIOS

OPERATING EXPENSE	(A)	(B)	(C)	=	1982-1983 WEIGHT
	1981-1982 WEIGHT	1981-1982 PCT INCREASE	$\frac{A \times (1.00 + B)}{1.00 + 1983 \text{ gen. adj.}}$		
1. Property Taxes	.067	2%	$\frac{.067 \times 1.02}{1.0475}$	=	.065
2. Library Taxes	.0063	7%	$\frac{.0063 \times 1.07}{1.0475}$	=	.0064
3. Refuse Collection	.02	0%	$\frac{.02 \times 1.00}{1.0475}$	=	.019
4. Water	.012	0%	$\frac{.012 \times 1.00}{1.0475}$	=	.011
5. Sewer Maintenance	.009	40%	$\frac{.009 \times 1.40}{1.0475}$	=	.012
6. Sewer Treatment	.009	10%	$\frac{.009 \times 1.10}{1.0475}$	=	.0095
7. License Fees	.0063	5%	$\frac{.0063 \times 1.05}{1.0475}$	=	.0063
8. Registration Fee	.0036	150%	$\frac{.0036 \times 2.50}{1.0475}$	=	.0086
9. Insurance	.034	8.5%	$\frac{.034 \times 1.085}{1.0475}$	=	.035
10. Management	.07	9%	$\frac{.07 \times 1.09}{1.0475}$	=	.07 **
11. Maintenance, Repair and Other	.20	8.5%	$\frac{.20 \times 1.085}{1.0475}$	=	.207
12. Landscaping and Street - NEW - Lighting Assessment					.0127
13. Gas - All	.047	18%	$\frac{.047 \times 1.18}{1.0475}$	=	.052
Hot Water Only	.034	-29%	$\frac{.034 \times (1 - .29)}{1.0475}$	=	.023
Electricity - All	.054	21%	$\frac{.054 \times 1.21}{1.0475}$	=	.062
Common Area Only	.030	21%	$\frac{.030 \times 1.21}{1.0475}$	=	.034

** The calculation results in 0.072 ratio. However, it was the Board's policy to assume that this ratio remains at a constant percentage of gross income.

Their responses indicate that the following percentages of owners pay for the following utilities:

Gas - 11.9%

Electricity - 9.3%

Water and Sewer - 60.9%

This year's survey of owners confirmed the reliability of last year's estimate of water and sewer treatment and sewer maintenance ratios. However this survey did not generate sufficient data to confirm or contradict last year's estimate of owners' gas and electricity expense ratios. 5/

b. Maintenance and Repairs Expense Ratio

Last year's survey indicated widely varying maintenance and repairs expense ratios among the different data sources. In contrast, these alternate sources indicated substantially similar ratios for other types of operating expenses.

This year's research is described in Section IV(h) which discusses maintenance and repairs expenditures.

IV. Operating Costs - Weights and Rates of Increase - June 1982 - June 1983

a. Refuse Collection, Water, Sewer Maintenance, Street Lighting and Landscaping Assessments.

For each of these² expenses no increase in rates took place from June 1982 through June 1983. 6/

No additional data was collected on the operating cost ratios for refuse collection and business license fees.

Data collected on water expense ratios for 46 buildings indicated the same ration that was estimated in last year's report.

Refuse collection rates for trash bins and the first trash can on a property have increased by 11%. The rate for additional cans has increased by 33% to 45% depending on the district in Berkeley where the can is located, as a result of the termination of the discount for additional cans on a single premise. Review of finance department data indicates that approximately half of all service is subject to rate increases in the range of 33 to 45% and that half has been subject

5/ The number of owner responses for which expense data could be compiled was lower than the number of owners who responded that they paid for these expenses, because some owners only indicated that they paid for a particular expense without indicating the amount of expenditure or providing the Board with a release to obtain expenditure information from the utility companies. In some cases data could not be used for various reasons (e.g. exempt units made expenses for income calculations impossible).

6/ Effective July 1, 1983 rates for these costs were increased by the following amounts: refuse collection - 22%, water - 20% sewer maintenance - 29%, city business license fee - 20%, library assessment - 5.4%, street lighting and landscaping and park maintenance assessment -0%. (The landscaping and park maintenance assessment was increased. The street lighting assessment was decreased. These changes were designed to offset each other).

In its final calculation, the Board last year decided to use the CPI - All Items Less Shelter since the all items index was overly sensitive to mortgage interest rates and home purchase prices.

In response to the calculations in last year's report there were comments that an index other than the CPI - All Items should be used to estimate the rate of increase in maintenance costs. Last year that index increased by 11.2%; therefore, its use favored landlords. This year, as previously indicated, it decreased by 0.5%; therefore its use would favor tenants. (This year, the CPI - All Items Less Shelter increased by 2.8%; 3.3% more than the CPI - All Items, while last year it increased 2.7% less than the CPI - All Items.)

Preferably, if there is a change in the index that is used, the decision would be made by the AGA subcommittee well in advance based on the merits of the index, rather than at the end of the year, when the results of the application of the index are known and are certain to influence choices. The only exception to this principle may be when new data sources or information are developed, which are clearly superior to the former ones or changes are made in the methodology used in calculating the index which had been used.

Any index measuring inflation is subject to criticism for a variety of reasons. The methodology for calculating the CPI - All Items has been subject to widespread criticism. January 1983 the U.S. Labor Department's Bureau of Labor Statistics revised the CPI - All Items. It is the authors' opinion that, where indexes are used to calculate operating cost increases, preferably the same indexes should be used each year. If indexes are changed from year to year, then an "index shopping" process will develop.

Also, the authors believe that a consistent policy should be followed on the choice of time period for which cost increases are considered. Last year's report considered increases which occurred from July 1, 1981 through June 30, 1982, in accordance with the specifications set forth by the City in its contract to prepare the report. The Board in its final general adjustment calculation disregarded the refuse collection cost increase because it was considered in calculating the prior year's general adjustment. Also, the Board took into account a special assessment which went into effect on July 1, 1982 and an increase in registration fees which came into effect in August 1982.

Arguments may be made for or against using a July 1 through June 30 time period. The rent stabilization ordinance states that a two-thirds vote of the Board is required to increase rents by more than 45% of the percentage increase in the CPI^{1/}. The time period for which the CPI increases is required to be calculated is "the twelve months ending the previous June 30"^{2/}. However, the ordinance does not specify what time period shall be used to calculate operating cost increases.

It would be consistent with the ordinance's ceiling on increases and the time period used for most of last year's cost calculations to use a July 1 through June 30 time period. This choice of time period was particularly significant in terms of the costs for which the CPI was used to calculate cost increases, because an early or later period would have yielded substantially different results.

1/ Section 11.b.(4)

2/ Id.

The drawback of using a July 1 through June 30 time period is that the general adjustment does not go into effect until the following January. As a result, use of the July 1 through June 30 time period results in ignoring cost increases which have been in effect for months prior to the time the AGA takes effect. This is particularly true because tax and assessment increases go into effect July 1 of each year. Also, the city tends to schedule other rate increases to take effect on July 1, concurrent with its fiscal year.

Switching methodologies presents its own set of peculiar problems. It results in cost increases for a period of more or less than one year being considered in the calculations for one general adjustment. In any case the Board should formulate a consistent policy in order to avoid annual debate over which cost increases should be considered and which should not.

II. Recalculation of Ratio

As indicated in last year's report, due to the fact that the various types of operating costs and rents each increase at different rates, operating cost ratios must be recalculated on an annual basis.

For the purpose of recalculating operating cost ratios it is assumed that rents increased by 4.75% on the average. Owners who did not pay for any gas and electricity costs were entitled to such increases. Owners who paid any gas and electric expenses were entitled to 5% increases. It is not known what portion of owners fall within each of these classes. More importantly, it is not known what percentage of owners took the maximum percentage increase permitted or what percentage may not qualify for last year's general adjustment. It is recommended that research on actual rates of increase in rents be performed prior to the calculation of next year's operating cost ratios.^{3/}

The table on page 5 sets forth these calculations:

III. 1983 Research

In addition, as a part of this year's survey, additional research was conducted on maintenance and repairs, management, gas, electric, water and sewer operating cost ratios. The results of this research are set forth in the discussion of each of these expenses.

a. Utility Survey

As a confirmation of the survey conducted for last year's study, a survey of owners' gas, electricity, water and sewer expenses was conducted. Six hundred and sixty owners were sent questionnaires requesting information as to which costs they paid for and which were paid for by tenants.^{4/} They were also asked to either supply cost information or supply a release authorizing the Board to obtain the information from the utility companies. One hundred and fifty-one owners (23%) completed and returned the questionnaires (Appendix B contains a copy of the questionnaire).

^{3/} The impact of a different assumption regarding the average rate of rent increases on the recalculation of operating cost ratios could be to change the ratios by up to a maximum of 5% (if a 0% rate of increase in rents were assumed) and to change the rent increase required to cover operating cost increases by 5% of whatever increase is calculated, e.g., .05% for a 1% increase and .10% for a 2% rent increase. In Table 2, each denominator would be changed from 1.0475 to 1,000 or to whatever rate of increase were assumed.

^{4/} The landlords were randomly selected by the Board's staff from the registration rolls. Every ninth building was selected. Landlords were given 2½ weeks

I. Introduction

Each year under the Berkeley rent stabilization law, the Berkeley Rent Stabilization Board has the duty of determining what across-the-board increases or decreases (general adjustments) in rents shall be authorized. The purpose of this report is to provide the Board and the public with information about the operating and maintenance expenses of residential rental property in Berkeley between June 1982 and June 1983. Subsequent to the first draft of this report, the authors were requested to include information about cost increases resulting from rate increases which went into effect on July 1, 1983.

It is not the purpose of this report to define what general adjustment would be "fair". Instead, its purpose is to estimate what general adjustment would cover increases and decreases in operating and maintenance expenses. In calculating what rent increases are necessary to cover operating cost increases, the ratios of various operating expenses to gross income are estimated. Then rate schedules and the Consumer Price Index are used to estimate increases in those costs.

The period from June 1982 through June 1983 was notable in several respects.

1. The San Francisco-Oakland Consumer Price Index-All Items, rather than increasing, decreased by 0.5%. However, the CPI All-Items Less Shelter increased by 2.8% (See Appendix A).
2. Increases in special assessments, business licenses fees, and water rates are already in effect, but they did not actually take effect within the July 1, 1982 - June 30, 1983 period.
3. The method used by the U.S. Bureau of Labor Statistics to compute the CPI - All Items was altered in January 1983 to reduce the impact of fluctuations in mortgage interest rates and home purchase prices on the CPI.
4. Electricity rates actually decreased.

Last year, the authors conducted a study of operating expenses in order to determine their ratios to gross income. A central purpose of that report was to perform an analysis which would obviate the need for the Board to make a new ratio study each year. Cost increases were calculated for the period June 1981 - June 1982. Review of last year's lengthy report is a prerequisite to a complete understanding of this year's report.

The table below indicates the ratios that were calculated and indices that were finally used by the Board to calculate cost increases.

TABLE 1
OPERATING EXPENSE RATIOS AND INDEXES

	<u>OPERATING EXPENSE</u>	<u>EXPENSE COMPONENT</u>		<u>INDEX</u>
		<u>WEIGHT</u>		
1.	Property Taxes	.067		Prop. 13 (2%/year)
2.	Library Taxes	.0063		City resolution
3.	Refuse Collection	.02		City rate schedule
4.	Water	.012		E.B.M.U.D. rates
5.	Sewer Maintenance	.009		City rate schedule
6.	Sewer Treatment	.009		City rate schedule
7.	License Fee	.0063		City rate schedule
8.	Registration Fee	.0036		Rent Board fee schedule
9.	Insurance	.034		CPI - All items less shelter
10.	Management	.07		Prior year's Gen. Adj.
11.	Maintenance, Repairs & Other	.20		CPI - All items less shelter
12.	Landscaping and Street Lighting Assessment	NEW		City resolution
13.	Gas			
	- all	.047		P.G.E. rates
	- hot water only	.034		"
14.	Electricity			
	- all	.054		"
	- common areas only	.030		"

October 18, 1983

TO: Members of the Rent Stabilization Board

FROM: G. Franchesca Callejo, Board Member and member of the AGA committee

Re: Overall increases and decreases in operating and maintenance expenses as set forth in the Baar-Keating 1983 Operating Cost Study, revised 9/26/83 and as discussed in committee meeting October 14, 1983

gfc

After the AGA committee meeting on Friday, October 14th, I took the time to further review each item contained in the summary of overall increases/decreases as set forth on page 16 of the Baar-Keating study, and the proposed inserts and deletions as discussed by the committee in response to the modified portions of the study handed out by Ken Baar at that meeting. With respect to items 1 through 13 I have the following comments:

1. I have no comment on items 1 through 8 (property taxes through registration fee;

2. With respect to insurance, I have reviewed Mr. Baar's proposed insert and believe that given the fact that the Marshall and Swift Publication Manual is more likely on point as to actual changes in insurance rates, given that last year the insurance component was modified by the CPI All Items less Shelter, which was 8.5%, given that the Marshall Manual shows a TWO YEAR increase (July 81 through July 1983) of a total of 7.4%, it is obvious to me that last year's adjustment for this component was more than adequate for the two year period. Therefore, there should be either no adjustment at all for this item, or there should be a decrease based on the difference between the two year Marshall Manual figure (7.4%) and the one year adjustment last year (8.5%). The difference is -1.1%, and without taking into consideration that the total amount has been collected for a year during which that total amount was not warranted (based on the two year figure from the Manual), the adjustment indicated is $.035 \times -1.1\% = -.039\%$. It is totally irrational to me to change the source of assessing the cost adjustment without looking at the cumulative effect of doing so. If the Board feels that the Manual is not the appropriate source for information, then I would argue for using the CPI All Items (-0.5%) on the basis that since last year we used the CPI All Items less Shelter because the All Items index was skewed, and this year that index has been corrected, the corrected all items CPI should be used, resulting in an adjustment of $.035 \times -0.5 = -.02\%$.

To: Members of RSB
October 18, 1983

Re: AGA Study and committee report
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3. Management - after due reflection, I believe it is inappropriate for the committee to weight in the portion of professionally manages properties at a 7% management fee for the reason that a minority of properties are subject to this above-average percentage, and given that it is an imputed cost to those owners who self manage. I stick by the 6% management fee, with the understanding that in fact the appropriate percentage should in all likelihood be lower given the reduced turnover which is a major factor in management expenses, and also given that those properties which have professional management are quite often larger properties with more complex demands and more time necessary. In fact, many properties incur virutally no management expenses with absentee owners who have the tenants make maintenance and repairs arrangements and do little more than collect rent in the mail every month.

4. Maintenance and Repairs - I conclude that the more accurate component weight is .14 and that last year's weight ^{/(.20)} was excessive. (See Baar-Keating) Last year's weight was adjusted by the CPI All Items Less Shelter - 8.5%, resulting in a component adjustment of $8.5\% \times .20 = 1.7\%$. Had the weight of .14 been used, this adjustment would have been $8.5\% \times .14 = 1.19\%$, a difference of .51%. The new 1982-83 weight would then be $.14 \times 1.085 = .145$. For the reasons stated in discussion under item 2, the adjustment would become $.145 \times -0.5\% = -0.7\%$. However since it is clear to me that this weight was over estimated last year I recommend that the excess of .51% be included, recognizing that owners have collected that excess for one year. Therefore, the total decrease in this category would be $-0.07 + -.51 = -.58\%$, and owners would be entitled to retain the excess collected during the calendar year 1983.

5. Items 12 and 13 - no comment

6. With respect to utilities, last year the Board granted an adjustment for owners who pay any utilities, without further description. On that basis, since the increases for gas and decreases for electricity are almost identical, it would appear that no adjustment would be appropriate.

7. With respect to 7-1-83 cost changes, the decision to include these items is strictly a policy choice for which I reserve comment at present. I would like to point out that should any decreases in 7-1-83 rates occur, there would be a similar lag in passing those along to interested parties.

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October 18, 1983

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8. Finally, I take this opportunity to stress that I do not believe that the Baar-Keating report includes all of the factors which we are obligated to consider in the Annual General Adjustment process, and by this summary and comment on particular components of the Study, I do not mean to suggest that this is the total picture or that we as a Board are mandated to pass on these particular sums, given the larger picture, which I as a Board member have from my 3½ years on the Board, and given the public testimony received during our most recent public hearing on October 6th. I merely wish to bring to the attention of the Board as a whole that within the framework of the Baar-Keating study I believe that certain corrections are in order, and such is my position on this limited aspect of the AGA process.

Date: October 20, 1983

To: Members of the Rent Stabilization Board

From: Board Members Brauer, Callejo, Gross, Illgen

Re: 1984 Annual General Adjustment

The members of the Berkeley Rent Stabilization and Eviction for Good Cause Board are required by law "once each year to consider setting and adjusting the rent ceiling for all rental units covered by the Ordinance." The AGA process mandates that such a general adjustment by the Board be done by adopting a "formula or formulas of general application." In addition, it states that this "formula will be based upon available data indicating increases or decreases in the expenses relating to the rental housing market in the City of Berkeley..."

In past years, the Board has used several methods for determining the AGA. We must therefore learn from previous AGAs in adopting a formula which is in accordance with the purpose of the Ordinance. After careful consideration, it is our conclusion as members of the Board that the full Board should grant a decrease of approximately 5% for the 1984 Annual General Adjustment. The following explains the legal, economic and moral reasons for our decision.

I. PURPOSE OF THE ORDINANCE AND THE CONSIDERATION OF PUBLIC TESTIMONY AS JUSTIFICATION FOR A ROLLBACK.

The purpose of the Rent Stabilization and Eviction for Good Cause Ordinance as explained in Section 3 is:

to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged.

We find that a decrease of 5% as next year's AGA follows from these stated purposes in a number of ways:

Many of the groups this Ordinance was designed to protect came before the Board and pointed out that housing in Berkeley demands an unreasonably large proportion of their monthly income and that this amount contributes to a rental housing crisis in Berkeley where only the wealthy can afford to pay high rents.

Making up a good size of the City's population, the student community came before the Rent Board at several of its public hearings. Representatives of several major campus governmental organizations spoke before us. The student community as represented by Dave Van Buren of the Graduate Student Union, Jeff Thomas, Graduate Assembly Chair, and Cathy Campbell, ASUC President, all presented a clear picture of students' economic increased pressure due to a rapid rise in registration fees, basic economic necessities, and a drop in available financial aid. Mr. Van Buren estimated that graduate students cost of living had increased by 25-30% over the last several years. The lack of affordable housing was a major concern to students.

The Grey Panthers testified that no increase is justified and as Grey Panther spokesperson Elizabeth Reed argued, according to the terms of the Ordinance, the Board has failed to fulfill the stated purpose of the Ordinance. The Panther's argument that the Board needs to "rededicate itself to the terms of the Ordinance" is true when we see its past failure to adequately protect tenants.

The testimony of these two groups with testimony by the Berkeley Tenants' Union and other members of the Berkeley community build a persuasive case for the Board to examine the cumulative affect of past years AGAs. All of these groups testified during public hearings to the excessive cumulative affects of previous AGAs, in particular citing the 1982 AGA as being contradictory to the purpose of the Ordinance. Given that these groups feel that the Rent Board has not taken steps which adequately advance the housing policies of the City, we feel a review of the cumulative affect of past years' AGAs be done as a way to begin to rededicate ourselves to the terms of the Ordinance while including a consideration of landlords' cost increases for the same time period. To not consider the testimony given at our public hearings would be to ignore not only the purpose of the Ordinance, but to make us guilty of ignoring Section 11.b(4) as well:

In adjusting rent ceilings under this subsection, the Board shall adopt a formula or formulas of general application. This formula will be based upon the annual rent registration forms, surveys, information and testimonies presented at public hearings, and other available data indicating increases or decreases in the expenses relating to the rental housing market in the City of Berkeley set forth in this subsection.

Taking a brief look at the Ordinance and then using testimony given by various community groups we find no choice but to include public testimony and prior years' AGA studies as part of our process in adopting

a formula for the 1984 Annual General Adjustment. If we then examine the affect of prior AGAs and if we focus on the 1982 AGA in particular, we find that in accordance with Section 3 and Section 11, a decrease is justified and within the parameters of the Ordinance. As far as the legality of considering cumulative affects are concerned, we remind the members of the Board of the legal opinion given to the Board dated October 20, 1982 which we believe fully supports our conclusions contained in this memorandum.

II. PRIOR AGAs

The first Annual General Adjustment, which took effect in 1981, was based upon a methodology of separating major landlord expense components and assessing the changes occurring in each category. This resulted in an adjustment of 5% for all rental units covered by the Ordinance and an additional 1.2% for utility expenses for those landlords who supplied space heating.

In attempting to defend the 1982 AGA order, Commissioner Stan Leibowitz abandoned the approach established in the first year's AGA, and without any particular or relevant data to support the decision, set the 1982 AGA at 9%, with an additional utility allowance which ranged from \$4.00 to \$16.00 per month. One of the few statistics included in the report supporting the result was the discounting of the Bay Area CPI all Items index. The consideration of the CPI alone would not be adequate to determine the AGA, particularly with an arbitrary method of discounting being used.

We found the 9% increase to be larger than could be justified according to the purposes of the Ordinance. First, the Bureau of Labor Statistics paper on changes in the CPI with respect to homeownership costs as a factor states: "There is no way of knowing whether the new measure will produce higher or lower inflation figures. IN THE PAST AN EXPERIMENTAL MEASURE SIMILAR TO THE ONE TO BE ADOPTED ROSE MORE SLOWLY THAN THE CPI (emphasis added)."

The significance of this is that by using an overweighted index of landlords' costs and arbitrarily discounting by a certain percentage in order to determine increases in landlords' maintenance and operating expenses will produce an AGA figure that does not closely approximate

an adjustment that would be within the purpose of the Ordinance.

Mr. Leibowitz recognized the overinflated value and the arbitrary manner in which he discounted that figure in comments he made on page 5 of his proposal:

"A comprehensive measure of cost increases of all kinds may be found in the Consumer Price Index. This has the particular advantage of being local for the S.F.-Oakland area. To serve as an indicator of the costs increases relative to rental property operation and maintenance, some discounting of the CPI seems appropriate. Two considerations are especially pertinent in such a discounting:

1. Housing costs are inflated in the CPI and will eventually be changed to represent 14% rather than 25% of the overall CPI. Still, we should keep in mind that some costs under the general heading of "housing" are especially pertinent to our concerns.
2. An unknown proportion of properties have fixed cost debt service representing a differing proportion of their total costs. Fixed cost debt service must somehow be recognized in any estimate of annual cost increases. Therefore, some discounting is appropriate for this factor, but we have no reliable data to indicate the magnitude that may be adequate for Berkeley properties."

Based upon this section in particular, and the rest of his report in general, we find Mr. Leibowitz's methodology, which was adopted by a majority of this Board, and the resulting increase, to be grossly inaccurate and unfair to the people this Ordinance was intended to protect. We make this finding for several reasons:

1. First, no fact based reason was given for using this CPI index when Cal-Pirg provided the Board with more accurate housing cost components and changes in cost." The only cost which Mr. Leibowitz recommended for consideration was the fixed cost debt service which he stated "we have no reliable data to indicate the magnitude of" for Berkeley properties.

2. The only way that the inflated percentage of homeownership costs in the prior CPI index was dealt with was by mentioning its overrepresentation. While the conclusion was the same as that stated by BLS, there was no attempt to find more accurate data. Furthermore, we disagree with the argument at page 5 of the final 1982 AGA "committee" report that "we do not have data which would allow computation of the annual cost increases for the average property." We continue to maintain that the best estimate of costs increases for 1980-81 was contained in the CalPirg REPORT OF THE 1982 BERKELEY GENERAL ADJUSTMENT OF RENT CEILINGS,

which was a more itemized, data-based and methodologically sound report to be used for the AGA formula for that year, and which provided the Board with the basic information need to determine that year's AGA. For these reasons, the resulting AGA and report on which it was based was in contradiction to the purposes of the Ordinance.

The CalPirg report used essentially the same methodology as was used to determine the 1981 AGA, and its conclusions mandated a markedly different result from the proposal actually adopted by the Board's majority. Given the markedly, substantially lower figure recommended by the CalPirg report for the 1982 AGA, we can only conclude that the 9% recommendation of Mr. Leibowitz which was enacted by the Board majority, was and remains in contradiction to the purposes of the Ordinance, all of which has created a devastating cumulative impact on Berkeley tenants. We only wish that Mr. Leibowitz and those Board members who chose to accept his recommendation in the face of the CalPirg report could, both then and now, address why the CalPirg report was considered less accurate, although such an explanation would have undermined the Board majority's ability to justify an increase which they knew was well above the spirit and intent of the law and contrary to the facts.

The validity of the CalPirg report can be found by comparing it to the two reports done by Baar-Keating. If we take the CalPirg data and derive component weights, as shown in Table 1, we see that they are close to the weights given by Baar-Keating in their report. We are not arguing that the CalPirg study is more accurate than the Baar-Keating reports, but rather that the CalPirg report on the 1982 AGA was and is measurably better than the method or lack thereof that was used by the Board majority in enacting the 1982 AGA at 9%, and therefore should be considered in this year's deliberations for the 1984 AGA.

In developing the 1983 AGA, we used the report done by Baar-Keating as a part of our 1983 AGA proposal for no increase for 1983. We did not take the report's final results, but instead developed a modified form of cost increases to be considered. Also, we took our modified version of cost increases and then included it in our formula which we determined to be a result of equaling no increase for the 1983 AGA. The reasons for a modified figure of 4.21% for costs increases for last year are contained at the end of this memorandum in the summary of last year's report. As in the case of this year's AGA, we argued for considering the cumulative

affect of past years' AGAs, and this explains our argument for no increase last year.

As part of our formula for determining the 1984 AGA, we concur with the comments and conclusions of Commissioner Callejo, concerning cost increases and decreases to be considered as part of the 1984 AGA. We cite her memo dated October 18, 1983 as being an adequate explanation of cost increases and decreases to be considered as part of our 1984 AGA decision. The memo does use the Baar-Keating report of this year as a starting point, but not as an end in itself for determining the 1984 AGA.

Finally, the following is a succinct analysis of the cumulative affects of prior AGAs:

<u>YEAR</u>	<u>ADOPTED AGAS</u>	<u>REAL ADJUSTMENTS REQUIRED</u>
1981	5%	5%
1982	9%	4.59%
1983	4.75%	4.21%
1984	0.13% (proposed)	0.13%
TOTALS:	<u>18.88%</u>	<u>13.93%</u>

Difference of Enacted and Real AGAs	18.88%
	<u>- 13.93%</u>
Total:	4.95%

Given the compounding affect of this overaccumulation, we recommend that the -4.95% be rounded off to be a decrease of 5%.

CALPIRG OPERATING COST
RATIOS RE: 1982 AGA

BAAR-KEATING SUMMARY OF 1982-83
OPERATING COST INCREASES/DECREASES

<u>Operating Expense</u>	<u>Derived Calpirg</u> <u>Weights</u>	<u>% Increase</u>	<u>Rent Increase</u> <u>Required</u>	<u>Weight</u>	<u>% change</u>	<u>Rent adjust-</u> <u>ment indicated</u>
1. Property taxes	.0825	2%	.165%	.065	2%	.13%
2. Library Taxes	.0038	0%	.0%	.0064	7%	.04%
3. Refuse Collection	.0178	3%	.52%	.019	0%	.0%
4. Water	.017	0%	.0%	.011	0%	.0%
5. Sewer Maintenance	.005	1.4%	.70%	.012	0%	.0%
6. Sewer Treatment	.010	11%	.11%	.0095	8%	.08%
7. Business License Fee	.0063	0%	.0%	.0063	9%	.06%
8. Registration Fee	.0040	0%	.0%	.0086	0%	.0%
9. Maintenance, Operating	.2622	9.3%	2.46%	.14 or .145	8.5% -0.5%	1.19-1.7= -.51% -.07% TTL 0.58%
10. Management	-	-	-	.06	4.75%	.29%
11. Insurance	-	-	-	.035	-0.5%	-.02%*
12. Fire Inspection Fee	-	-	-	New	New	.13%
13. Street Lighting and Landscaping Maintenance	-	-	-	.0127	0%	0%
14. Gas - all	-	-	-	.052	10%	.52%]
hot water only	.058	3%	.15%	.023	10%	.23%] 0%
15 Electricity - all	-	-	-	.062	-7%	-0.43%] net
common areas	.016	3%	.48%	.034	-7%	-0.23%] effe
TOTALS			4.59%		TOTAL:	0.13%

*Note that if Commissioner Callejo's first recommendation is used regarding insurance, the decrease would be larger than -0.02%, rather it would be $.035 \times -1.1\% = -0.039\%$, resulting in a total AGA recommendation of +0.11%.

City of Berkeley



RENT STABILIZATION BOARD
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6128

October 12, 1983

To: Members of the Rent Stabilization Board
From: *Jac* Jacqueline Foster, Board Secretary
Subject: STAFF REPORT - 1984 ANNUAL GENERAL ADJUSTMENT

Revised Charts of Increases/Decreases in Operating/Maintenance Expenses

Staff has met with the AGA Committee and the Board consultant relative to the revision of certain expense components of the study. The consultant has indicated that revised charts will be available after the October 14, 1983 AGA Committee meeting.

Consumer Price Index Changes

Staff has obtained additional information relative to the changes in the consumer price index. This material is attached for your review.

Modified Rent Increase/Decrease Notice - Modified Annual General Adjustment Order

Staff recommends that the Board approved notice be used if the Board adopts an adjustment that increases or decreases the rents. Certain sections of the Order would have to be reworded if the rents are decreased by the 1984 AGA. Sections 4, 5, 7, 9, 10, and 11 will have optional language for rent decreases.

If the 1984 AGA provides no upward or downward of rents, staff has prepared a general announcement which will be mailed to all residential rental property owners and tenants informing them of the Board's action.

Prior Year Increases

Staff is redesigning the notice for prior year increases in order to provide more clarity. The revised form will be available for the next Board meeting.

Overall Ratio of Operating Expenses to Gross Income

The consultant has provided the following response to a question from the AGA Committee.

Questions have been raised about why the overall ratio of operating expenses to gross income is higher than last year's ratio. As long as expenses and gross income increase at different rates, the ratio of expenses to gross income will change.

October 12, 1983

Page 2.

Subject: STAFF REPORT - 1984 ANNUAL GENERAL ADJUSTMENT

The following simplified hypothetical is designed to illustrate such changes:

	<u>Year 1</u>	<u>Increases</u>	<u>Year 2</u>
Gross Rent	100	Rents increase 3%	103
Operating Exp.	40	Operating exp. increase 7%	42.8
Ratio Op. Exp./Gross	40%		41.5%

AGA Tenant Survey

The tabulation of the survey has not been completed due to staffing limitations. The results will be available for the next Board meeting.

Staff recommends that the Board hold a special meeting on Thursday, October 20 from 5 - 7 PM in order to review the committee/staff report, as well as any other available data relative to the 1984 annual adjustment.

Attachments (3)

FORM FOR TAKING THE 1981 AND/OR 1982
AND/OR 1983 ANNUAL GENERAL RENT INCREASES

Instructions for use of this form: For 1981, 1982 and 1983, the Rent Stabilization Board approved rent increases. These allowable rent increases were optional. That is, the rental property owner had the option of taking some or all of the increase when it was granted or the option of deferring some or all of the increase. Should a rental property owner want to take some or all of the deferred rent increase, this ENTIRE form should be completed and given to the tenant(s). Here is a summary of the 1981, 1982, 1983 and 1984 rent adjustments:

1981

5% rent increase	6.2% rent increase if owner paid for all heating
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1982

9% rent increase

Plus, if the rental property owner paid for all utilities, the additional increase was authorized:

\$4/ studio	\$7/one bedroom	\$9/two bedrooms	\$10/three bedrooms	\$12/four bedrooms	\$16/house with three or more bedrooms
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Rental property owners who deferred the 1982 rent increase are entitled to a banking bonus. Please contact the Rent Stabilization Board for details.

1983

4.75% general rent increase	5% total increase if owner pays for any utilities
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1984

0%

NOTICE OF RENT INCREASE PURSUANT TO THE 1981 AND/OR 1982/1983
ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS MADE BY THE RENT STABILIZATION BOARD

Tenant's Name: _____

Street Address: _____ Unit No: _____ Zip: _____

In accordance with the Rent Stabilization and Eviction for Good Cause Ordinance and the rules and regulations of the Rent Stabilization Board, the tenants of the rental unit described above are notified of the following:

The rental property owner has not taken the entire annual rent increase authorized for (please check) _____ 1981 _____ 1982 _____ 1983. This notice gives you 30 days' notice that as of (date) _____ the rent will increase to reflect the deferred rent increases.

The deferred rent increase amount is \$ _____. Your total rent will be \$ _____ per month starting (date) _____.

Dated: _____

(Signature of landlord or designated agent)

IMPORTANT INFORMATION

If a rental property owner has failed to register completely by September 1, the amount of the General Adjustment for which the owner shall be eligible shall decrease by ten (10) percent per month for each month beyond December 1 for which the landlord fails to register.

A landlord who is ineligible to raise rents under this General Adjustment for an entire calendar year shall not be eligible to raise rents under this General Adjustment in future years. All registration statements which have been filed concerning your unit are available for inspection and copying at the Rent Stabilization Board office. You may also obtain information from the Board concerning calculation of the maximum lawful rent for your unit.

RENTS CANNOT BE INCREASED UNDER THE GENERAL UPWARD ADJUSTMENT IF:

- (1) All rental units in the property have not completely registered.
- (2) The owner is charging rent in excess of the maximum allowable rent for the unit permitted under the Ordinance.
- (3) The facts declared by the landlord in this notice are untrue and incorrect.

What Tenants Can Do If They Believe A Rent Increase Is Illegal:

If the landlord's declaration in the rent increase notice is untrue or incorrect or the rent increase demanded, accepted, received, or retained is illegal for any of the reasons stated above, tenants may take any of the following actions:

- (1) Contact the Rent Stabilization Board Offices.
- (2) Tenants may petition the Rent Stabilization Board for authorization to withhold rent.
- (3) Tenants may withhold rent without Board authorization. (Prior to taking such action, tenants should consider seeking counseling from a tenant organization, an attorney or the Rent Stabilization Board's Public Information Unit to determine whether this remedy is available).
- (4) Tenants may sue for injunctive relief.
- (5) Tenants may sue for actual damages, and punitive damages up to \$750.00.

For further information concerning the General Adjustment of rent ceilings and tenant rights under the Rent Stabilization and Eviction for Good Cause Ordinance, contact the Rent Stabilization Board, 2180 Milvia Street, Berkeley, California 94704, weekdays 9:00 a.m. to 4:00 p.m. Telephone counseling is available every Monday evening from 5:00 to 7:00 p.m. and weekdays 9:00 to 4:00 p.m.

Rent Stabilization Program
2180 Milvia Street
Berkeley, CA 94704

To:

FORM FOR TAKING THE 1981 AND/OR 1982
AND/OR 1983 ANNUAL GENERAL RENT INCREASES

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Rental property owners who deferred the 1982 rent increase are entitled to a banking bonus. Please contact the Rent Stabilization Board for details.

1983

4.75% general rent increase	5% total increase if owner pays for any utilities
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1984

0%

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ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS MADE BY THE RENT STABILIZATION BOARD

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Street Address: _____ Unit No: _____ Zip: _____

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The deferred rent increase amount is \$ _____. Your total rent will be \$ _____ per month starting (date) _____.

Dated: _____

(Signature of landlord or designated agent)

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- (3) The facts declared by the landlord in this notice are untrue and incorrect.

What Tenants Can Do If They Believe A Rent Increase Is Illegal:

If the landlord's declaration in the rent increase notice is untrue or incorrect or the rent increase demanded, accepted, received, or retained is illegal for any of the reasons stated above, tenants may take any of the following actions:

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Rent Stabilization Program
2180 Milvia Street
Berkeley, CA 94704

To:

1105. Annual General Adjustment Order for 1984

Pursuant to the provisions of Section 11 of the Rent Stabilization and Eviction for Good Cause Ordinance, as amended, the Rent Stabilization Board has considered setting and adjusting the rent ceiling for all rental units covered by the Ordinance.

The Board has determined that the lawful rent ceilings established in the Annual General Adjustment Order for 1983 shall remain in effect for 1984. There shall be no increase or decrease in the rent ceiling for any covered unit in 1984 except pursuant to the Individual Rent Adjustment process set forth in Section 12 of the Ordinance and the applicable regulations.

In the absence of any Individual Rent Adjustment Order, a landlord may not charge more than the lawful rent ceiling for any covered unit in 1983. Security, cleaning and other deposits may not be increased for existing tenants.

Homeownership Costs

The Bureau of Labor Statistics has announced a plan to change the way the Consumer Price Index measures homeownership costs. Here are some questions and answers about the change.

1. Why is the change in the homeownership component being made?

The change is being made to improve the CPI. The cost of owning a home is a large part of a family's expenses. People buy houses to live in and because houses are important investments. The CPI should include the price of the shelter provided by the home but should exclude the change in the value of the house as an asset. The new approach will do that.

2. Will the change result in lower inflation figures?

There is no way of knowing whether the new measure will produce higher or lower inflation figures. In the past an experimental measure similar to the one to be adopted rose more slowly than the CPI.

3. Was politics involved in the decision to change the CPI?

The decision to change the homeownership component was made entirely on technical grounds by the Commissioner of Labor Statistics. The CPI is widely used to adjust benefits under government programs and payments under private contracts. Any change in the index naturally is of concern to those who have a stake in these payments, both as payers and recipients. Because of these concerns, decisions about CPI measurement are carefully insulated from politics.

4. How does the present CPI measure homeownership?

The present CPI reflects the cost of the purchase of a house as an asset. The index includes the net price of the house purchased, the total amount of mortgage interest contracted for over half the life of the mortgage, property taxes, insurance, and home maintenance and repairs. The current CPI represents the expenditures of only those who purchased houses in the base period,

roughly 8 percent of all consumers covered by the index. All other consumers living in their own homes are assumed to have no home purchase and mortgage interest cost at all.

5. What is wrong with the current approach?

From a practical point of view, accurate data needed to support the current approach are becoming increasingly difficult to obtain. The scarcity of long-term mortgage financing, the growth of seller financing, and the advent of variable rate mortgages have combined to make the current approach unrepresentative of the marketplace.

Furthermore, the current approach is based upon the purchase of an asset rather than the price of the shelter consumed. The index reflects shelter costs incurred only by those who purchased homes in the base period and does not cover shelter costs incurred by others who lived in homes purchased in earlier years.

6. How will the new homeownership measure differ?

A new measure of rental equivalence will be used to represent the cost of the shelter consumed by the homeowner. BLS agents will collect information on rents for housing units that are similar to those that are owned. The change in these rents will represent the change in the amount that a homeowner would have to pay each month to live in a home like the one he owns.

7. How will the change to rental equivalence affect the weight of homeownership in the CPI?

Homeownership costs make up about 25 percent of the present CPI. In an experimental rental equivalence measure produced by BLS, homeownership accounted for about 14 percent.

8. How will the rental equivalence measure differ from the CPI rent measure?

The rental equivalence measure will consist of rents for a sample of homes for which sample weights represent owned units. Thus, in each sampling area, the

housing units will represent the proportion of owner-occupied houses rather than the proportion of rental units.

9. How do other countries measure homeownership?

Most other countries use a rental equivalence approach; some measure user cost more directly; and some exclude homeownership completely from the index. The United States is the only country in the world which includes the asset value of a house in the CPI.

10. Why did BLS wait so long to make the change?

The CPI is an important statistical series which affects the incomes of a large number of people. It must have public credibility and it must be understood. The BLS raised the measurement issue publicly more than 10 years ago, published papers on the subject, calculated alternative measures, and encouraged public discussion of the issues involved. It took time for people to understand the issue.

11. Why is there so much advance notice of the change?

A major change in an important index like the CPI cannot be made without advance notice. Approximately 1 year of notice is being provided for the change in the CPI for All Urban Consumers (CPI-U), which has only existed since 1978. The CPI for Urban Wage Earners and Clerical Workers (CPI-W), however, has been used for indexation since World War I. It is used in a large number of major collective bargaining agreements, many of which last for 3 years. For this reason, longer notice is being given for the CPI-W. Thus, the CPI-U will be changed beginning with data for January 1983 and the CPI-W beginning with data for January 1985.

12. Where can I obtain CPI information regularly?

The most comprehensive source of CPI information is the monthly BLS periodical, *CPI Detailed Report*, available for \$20 per year from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Comparison of homeownership measures

	<i>Current treatment</i>	<i>Rental equivalence</i>
1. Concept:	Purchase of asset	Purchase of shelter
2. Families covered:	For house price and mortgage interest, only those families who in base period purchased house	All families who lived in owned homes during base period; covers the entire stock of owned homes
3. Method of weight derivation:	<p>a. For property taxes, property insurance, home maintenance and repairs: Expenditures of all homeowners in base period</p> <p>b. For house price: Net expenditures (purchases minus sales) for houses during base period</p> <p>c. For mortgage interest: Total amount of interest expected to be paid over half the stated life of the mortgage only for those who purchased house in base period</p>	Estimate of rental value of all owner-occupied houses in base period; based on specific question asked in Consumer Expenditure Survey
4. Prices used:	Current monthly prices for each element, including current price of house and current mortgage interest rate (conventional, Federal Housing Administration, and Veterans Administration)	Current rent paid for homes like those that are owned

DATE: September 28, 1983

TO: MEMBERS OF THE RENT STABILIZATION BOARD

FROM: JACQUELINE FOSTER, PROGRAM CHIEF

RE: PRELIMINARY STAFF REPORT ON THE 1984 ANNUAL GENERAL ADJUSTMENT

According to the Rent Stabilization Ordinance, Section 11, the purpose of the annual general adjustment is to adjust rents for residential rental property each calendar year so that the increase or decrease closely approximates the cost increases or decreases which are occurring in the same calendar year.

The Board again commissioned a report on operating costs from the Baar/Keating Consultants, who prepared the 1983 study on operating costs. Board, staff and the general public have reviewed the consultant's study for the 1984 annual general adjustment. The consultants have made two revisions to the 1984 study. The September 8, 1983 revision contained no substantive changes. The September 28, 1983 revision does contain substantive changes in at least three areas:

- a) a recommendation to use the increase for insurance replacement cost rather than the CPI when calculating increases in insurance costs;
- b) information about management costs from one management company;
- c) a revision of increases for utilities to reflect the 10% increase in gas cost rather than a 9% decrease as previously reported.

DATA EVALUATION

In the course of calculating the increases and decreases in operating costs for the annual general adjustments, the Rent Stabilization Board has consistently considered a combination of prior year data and current year data. Current year data was considered in those instances where specific rate increases for the current year were known.

For instance, for the 1982-1983 annual general adjustment, the Board considered increases and decreases in prior year operating expenses, as well as the library tax and the special assessment fee, which were adopted by the City Council earlier in the year but became effective July 1, 1982.

Staff recommends that the Board adopt a policy which permits the inclusion of increases and decreases in operating costs for the prior year, as well as increases or decreases that will take effect as of July 1 of the current year, with the clear understanding that prospective costs must be for specific rate increases that have been assessed by local, state or federal government, or public utility, which take

effect on July 1st of the current year. Using this policy, operating costs that are increased or decreased as of July 1 of the current year will be passed through six months after they become effective; otherwise these adjustments would not be passed through for eighteen months.

ANNUAL GENERAL ADJUSTMENT VOTING REQUIREMENTS

Upon careful review of the consultant's study and the provisions of the law with regard to the annual general adjustment, staff has requested a legal analysis relative to the following issues:

- a) the number of votes necessary to carry a motion to have a negative adjustment for 1984.
- b) the number of votes necessary to carry a motion to have a zero adjustment for 1984.
- c) the net effect on the annual adjustment if no motion offered by the Board relative to the amount of the annual general adjustment is adopted.

A response from our legal counsel is attached.

These are pertinent questions due to the wording in Section 11 of the Ordinance as amended by Measure G and given the fact that the June 1983 -CPI -All Urban Consumers was -0.5%. The amended section reads as follows:

Adoption of a formula greater than forty-five percent (45%) of the increase in the Consumer Price Index for the twelve months ending the previous June 30 shall require the affirmative vote of six (6) Commissioners, other provisions notwithstanding. Adoption of such a formula shall be a specific and special exception to the requirement of only five (5) affirmative votes to make a decision. For the purposes of this subsection, the Consumer Price Index shall mean the Consumer Price Index for all urban consumers in San Francisco—Oakland, all items (1967 equals 100), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor, as it pertains to the City of Berkeley.

Clearly it will necessary for six votes to be cast in order to effect an increase in the 1984 annual general adjustment.

OTHER ANNUAL GENERAL ADJUSTMENT ISSUES

Staff has consulted with the Annual General Adjustment Board Subcommittee with regard to the following recommendations:

- a) If the Board adopts an annual general adjustment which increases or decreases the rent ceiling, staff recommends that notice of such increases or decrease be made on the Board approved form with certain modifications. A discussion draft of the modified form will be included in the addendum to the staff report on the 1984 Annual General Adjustment. That report will be included in the October 12, 1983 agenda packet.
- b) If the Board adopts a zero annual general adjustment, or if no motion put forth is adopted, staff recommends that a mailing be prepared for all landlords and tenants covered under the Ordinance, notifying them of the zero annual general adjustment and directing landlords to the individual rent adjustment process if they feel that they have increased costs which justify a rent increase.

Staff is in the process of developing a chart which depicts the June 82 - June 83 operating cost changes and June 82 - June 83 operating cost changes plus those specific rate increases adopted by the City Council and which were effective July 1, 1983, the beginning of the City's fiscal year. This chart will be available in the October 12, 1983 agenda packet. In addition, staff is meeting with the consultant with regard to the need to adjust the weights for various maintenance and operating costs.

CITY OF BERKELEY

DATE: SEPTEMBER 28, 1983 ~~Memorandum~~

TO: JACQUELINE FOSTER, Rent Stabilization Program Chief

FROM: NATALIE E. WEST, City Attorney
FREDERICK W. BRAY, Senior Attorney *FWB*

SUBJECT: Annual General Adjustment

The purpose of this memo is to confirm our conversation regarding various options involving the 1984 annual general adjustment. Due to time constraints, this is not a formal opinion but is intended to respond to certain issues raised in our recent discussions.

ISSUES

1. Does the Rent Ordinance require a negative rent adjustment if the Consumer Price Index is negative?
2. Are six votes required for a zero percent rent adjustment if the Consumer Price Index is negative?
3. Are six votes required for a rent reduction?
4. Is the Board obliged to grant a rent increase if the Consumer Price Index is negative but some costs have increased.

CONCLUSIONS

1. No, the Ordinance merely limits upwards adjustments to 45% of the increase in the CPI unless there are six votes. It does not require a reduction based solely upon changes in the CPI.

2. and 3. No, the six vote requirement is triggered only by increases.

4. Whether a rent increase is required is a policy matter to be determined within the informed judgement of the Rent Stabilization Board. In an extreme situation, large cost increases which were not reflected in the CPI might require an upwards adjustment to be granted. If the cost increases are small and the CPI trend is negative, the Board could probably determine that no upward adjustment is necessary.

ANALYSIS

Section 11.a. of the Rent Stabilization and Eviction for Good Cause Ordinance, as amended, provides in pertinent part:

"Adoption of a formula greater than forty-five percent (45%) of the increase in the Consumer Price Index for the twelve months ending the previous June 30 shall require the affirmative vote of six (6) Commissioners, other provisions notwithstanding . . . "

This provision refers only to the increase in the Consumer Price Index. It is clearly intended to limit the amount of any upward adjustment. It was enacted by the voters following Board approval of an annual general adjustment which exceeded the percentage which would have been permissible had this section been contained in the original version of the Rent Stabilization and Eviction for Good Cause Ordinance. If the intent was to limit the annual general adjustment to 45% of the change in the CPI, presumably the provision would have been differently worded.

Thus, the fact that the Consumer Price Index is negative does not in itself require a rent reduction. Because the Ordinance provision cited above applies only to increases, six votes are not required to pass a zero annual general adjustment or a general rent reduction.

If a situation developed where there were major cost increases which were not reflected in the Consumer Price Index, the Board might incur an obligation to grant a rent increase which exceeded 45% of the increase in the CPI.

If the cost increases are small and the CPI is negative, the Board could conclude that no upward general adjustment is warranted. So long as a reasonable factual basis exists for the Board's determination, it has considerable freedom to decide whether or not there should be a general rent adjustment and the amount of any such upwards or downward adjustment. The extent of this discretion was affirmed in the trial court decision rejecting a challenge to the 1982 annual general adjustment, Carlson v. City of Berkeley, Alameda Superior Court No. 554264-0.

City of Berkeley



(415) 644-6128

RENT STABILIZATION BOARD
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

October 20, 1983

TO: Members of the Rent Stabilization Board

FROM: Jacqueline Foster, Board Secretary

SUBJ: Random Sample Tenant Survey - September 1983

The RSP conducted a tenant survey of utility cost residential rental property. Other pertinent questions relative to the maintenance and repair of Berkeley's residential housing stock were included in the survey.

This is a preliminary report. This report will provide statistical data relative to the responses received to the survey. A staff analysis will be prepared in the near future. The survey was sent to the tenants in every 9th building. 646 buildings representing 2,707 units were surveyed. 122 surveys were returned as undelivered mail. 470 completed surveys were returned. This represents 18% responses.

Of the responses:

127 tenants lived at their address less than 18 months (27%).

200 tenants lived at their address from 1½ to 5 years (42.5%).

62 tenants lived at their address from 6 to 10 years (13%).

65 tenants lived at their address over 10 years (13.8%).

16 did not provide this information.

Participants were requested to complete Part A regardless of who paid utility expenses. Participants were requested to complete Part B and Part C only if they lived in this building for at least 18 months.

UTILITY EXPENSES

1. Owner(s) or tenant(s) pay for Gas and Electricity.

a. Owner(s) pays all Gas and Electricity.	35	7%
b. Owner(s) pays for all Gas and Tenant(s) pays all electricity.	23	4%
c. Owner(s) pays all Electricity and Tenant(s) pay all Gas.	4	.8%

d. Tenant(s) pays for all Gas and Electricity.	199	42.3%
e. Tenant(s) pays gas and electricity for their own unit, and landlord pays for common areas (e.g. hallways, laundry, garage, outdoor lights).	215	45.7%
f. Other variations or no response	10	2%
2. Owner(s) or tenant(s) pays for Water and Sewer		
a. No response	14	2%
b. Owner(s) pays EBMUD for Water and Sewer	357	75%
c. Tenant(s) pays EBMUD for Water and Sewer	99	21%

Tenants were requested to complete Part B (and Part C) only if they lived in the building for at least eighteen (18) months. 343 units met this criteria. By maintenance and repairs, the survey is referring to normal and ordinary maintenance and does not include major capital improvements such as painting the exterior of the building, reroofing the building, or substantial re-modeling. The following information was requested:

MAINTENANCE AND REPAIRS

1. Who is responsible for maintenance and repairs?

a. Nobody	2	.05%
b. Landlord	229	66.0%
c. Tenant	12	3%
d. Both	100	29%

2. Since you moved in, have you ever complained to the landlord or manager about any serious problems concerning maintenance or repairs either in the building or your apartment?

a. Yes	205	59.7%
b. No	138	40.2 %

3. How did the landlord/manager respond to your complaints? EXPLAIN

Responses will be included in the analysis.

4. If serious repairs were made, who made them?

a. Landlord	247	72%
b. Tenant	12	3%
c. Landlord employee/contractor	84	24%

5. As opposed to repairs, did your landlord ever make any capital improvements? If so, what and when

Responses will be included in the analysis.

Random Sample Tenant Survey - September 1983
Page Three

6. Did landlord increase rent?

a. Yes	176	51%
b. No	103	30%
c. No response	64	

7. Since you moved in, overall has the quality of maintenance in your building/apartment

a. improved	40	11.6%
b. remained about same	244	71%
c. seriously deteriorated	59	17%

8. Has the landlord ever made any major capital improvements during the period you have lived in the building?

a. Yes	110	32%
b. No	230	67%
c. No response	3	.08%

If yes, list the improvements and the approximate dates.

Responses will be included in the analysis.

9. Did the landlord increase rents based on these capital improvements?

a. Yes	24	6%
b. No	221	64%
c. No response	101	29%

If yes, list the monthly rent increase:

Responses will be included in analysis.

MEASURE "N"



The passage of Measure N, which will result in an elected Rent Board, has been addressed in a number of legal opinions which are included for Council's information.

CITY OF BERKELEY

DATE: April 22, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning & Community Development

Attn: Jacqueline Foster, Director, Rent Stabilization Board

FROM: Natalie E. West, City Attorney

SUBJECT: APPLICABILITY OF PROVISIONS OF CHARTER AMENDMENT MEASURE N TO EXISTING RENT BOARD; TERM OF OFFICE OF THE FIRST ELECTED RENT BOARD, SCOPE OF THE ELECTED RENT BOARD'S POWERS

INTRODUCTION

At the November 1982 municipal election, Berkeley voters passed Measure "N", an initiative charter amendment which provided inter alia for an elected Rent Stabilization Board (hereafter "Rent Board") composed of nine commissioners.

Measure "N" provides that the first election of the Rent Board Commissioners must take place at the June 1984 presidential primary election and that the Commissioners elected will serve for staggered terms which depend upon the number of votes each receives. At present, each member of the City Council appoints one member of the City's Rent Board. Based on these facts, you have asked the following questions:

ISSUES

1. Are the conflict of interest and financing provisions of Measure "N" applicable to the present Rent Board?
2. Does the term of office of the five Commissioners who receive the least votes at the June 1984 election expire in November 1984?
3. Is the elected Board charged with responsibility for administering the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance?

CONCLUSIONS

1. No. The conflict of interest provisions of Measure "N" are only applicable to the elected Rent Board.
2. No. The term of office of the five commissioners who receive the least votes at the June 1984 election expires in November 1986. The remaining four commissioners will hold office until November 1988.
3. No. The elected Rent Board is limited to administering programs which regulate residential rents and evictions, it will not regulate commercial rents.

CITY OF BERKELEY

DATE: April 22, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning & Community
Development
Attn: Jacqueline Foster, Director, Rent Stabilization Board

FROM: Natalie E. West, City Attorney

SUBJECT: APPLICABILITY OF PROVISIONS OF CHARTER AMENDMENT MEASURE N
TO EXISTING RENT BOARD; TERM OF OFFICE OF THE FIRST
ELECTED RENT BOARD, SCOPE OF THE ELECTED RENT BOARD'S
POWERS - PAGE 2

ANALYSIS1. Applicability to Current Rent Board

Measure "N" repealed and reenacted Article XVII. Section 121(3) adopts the conflict of interest provisions of state and local law and goes on to provide that owners of rental property "constitute the rental industry for purposes of this Article." (emphasis supplied). The "Article" referred to in this section is Article XVII which is entitled "Elected Rent Stabilization Board". (emphasis supplied). Thus, the literal language of the charter amendment appears to limit the applicability of its conflict of interest provisions to the elected Rent Stabilization Board.

Similarly, the provision regarding the manner in which the Board may finance its expenses (Section 123(3)) is preceded by an introductory sentence at the beginning of the section which provides: "The elected Rent Stabilization Board shall have the power...." (emphasis supplied). Thus, the language of the section itself appears to limit its application to the elected Rent Board.

2. Term of Office of Elected Board

Section 122(3) of the amended Article provides that the election for the first board "shall be held at the regular municipal, statewide primary or statewide general election, whichever first occurs at least 90 days after enactment of this article."

By virtue of a charter amendment passed by the voters in June 1982, the regular municipal election now takes place in November of each even numbered year instead of in June of each odd numbered year. Thus, pursuant to Section 122(3), the election of the first Board must take place at the June 1984 presidential primary election which precedes the November 1984, regular municipal election and is the first statewide general or statewide primary election since Measure "N" was passed.

CITY OF BERKELEY

DATE: April 22, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning & Community
Development

Attn: Jacqueline Foster, Director, Rent Stabilization Board

FROM: Natalie E. West, City Attorney

SUBJECT: APPLICABILITY OF PROVISIONS OF CHARTER AMENDMENT MEASURE N
TO EXISTING RENT BOARD; TERM OF OFFICE OF THE FIRST
ELECTED RENT BOARD, SCOPE OF THE ELECTED RENT BOARD'S
POWERS - PAGE 3

Section 122(4) provides that the five Commissioners receiving the least votes at the June 1984 election "shall hold office until the last day of November in the next even numbered year." (emphasis supplied). It is a fundamental principle of statutory construction that each word must be given effect in interpreting any provision and that none may be rendered surplusage. (Gay Law Students Association v. Pacific Telegraph and Telephone Co.) (1979) 24 Cal.3d 458, 478.) Thus, the use of the term "next" to qualify the term "even numbered year" refers to the year 1986, which is the next even numbered year after 1984, the year the Board is first elected pursuant to Section 122(3). This Section goes on to provide that the remaining four Commissioners will hold office "for an additional two years". Thus, the term of office of these four commissioners will expire in November 1988.

3. Scope of Elected Board's Powers

In June 1982 Berkeley voters enacted the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance ("Measure I") which regulates commercial rents and evictions from commercial property in the Elmwood district in Berkeley. By the terms of the ordinance, the Board of Adjustments is charged with the responsibility for implementing its provisions. Below we address whether, by virtue of the subsequent enactment of Measure "N", jurisdiction to administer the provisions of Measure "I" has been transferred from the Board of Adjustments to the elected Rent Board.

In resolving this question we must first examine the language and legislative purpose of Measure "N" in order to determine whether it purports to confer on the elected Rent Board the power to administer all rent stabilization regulatory schemes including those which apply to commercial property.

Section 123 of Article XVII defines the powers and the duties of the elected Rent Board and provides in pertinent part:

CITY OF BERKELEY

DATE: April 22, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning & Community
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Attn: Jacqueline Foster, Director, Rent Stabilization Board

FROM: Natalie E. West, City Attorney

SUBJECT: APPLICABILITY OF PROVISIONS OF CHARTER AMENDMENT MEASURE N
TO EXISTING RENT BOARD; TERM OF OFFICE OF THE FIRST
ELECTED RENT BOARD, SCOPE OF THE ELECTED RENT BOARD'S
POWERS - Page 4

The elected Rent Stabilization Board shall have the power to determine, to arbitrate and to set rent levels whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance and to administer any Berkeley program which regulates rents and evictions (emphasis supplied).

Although the literal language of this section suggests that the elected Rent Board will have jurisdiction to administer the Elmwood Commercial Rent Stabilization and Eviction Protection ordinance, when this section is read in conjunction with the other provisions of the Charter amendment (see e.g. Smith v. Regents of the University of California (1976) 58 Cal.App.3d 397, 403) and in light of the circumstances existing at the time the amendment was enacted (see Gaylon v. Municipal Court (1964) 229 Cal.App.2d 667, 672) it would appear that the Rent Board is not granted the power to regulate rents of and evictions from commercial property.

Section 120 of the ordinance sets forth the legislative purpose which prompted enactment of Measure "N".

The purpose of this article is to provide for proper administration of programs to regulate residential rents; to protect tenants from unwarranted rent increases and arbitrary, discriminatory or retaliatory evictions; to help maintain the diversity of the Berkeley community, and to ensure compliance with legal obligations relating to the rental of housing. (emphasis supplied)

CITY OF BERKELEY

DATE: April 22, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning & Community
Development
Attn: Jacqueline Foster, Director, Rent Stabilization Board

FROM: Natalie E. West, City Attorney

SUBJECT: APPLICABILITY OF PROVISIONS OF CHARTER AMENDMENT MEASURE N
TO EXISTING RENT BOARD; TERM OF OFFICE OF THE FIRST
ELECTED RENT BOARD, SCOPE OF THE ELECTED RENT BOARD'S
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The use of the words "residential" and "housing" appears to reflect a legislative intent to limit the Board's activities to the regulation of residential rents and evictions. Moreover, at the time Measure "N" was enacted, determining the legality of many Berkeley rents required the application of four separate ordinances: "old" Measure I; No. 5212; No. 5261 (Measure "D") and No. 5467 (Measure "G"). Thus, we conclude that the language enabling the Board to administer any ordinance regulating rents appears to be intended to include these and any subsequent laws which regulate residential rents or eviction from rental housing, but that it does not authorize the Rent Board to administer the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance or any other ordinances which regulate the rents of commercial properties.

Accordingly we conclude that the Board of Adjustments continues to be responsible for implementing the provisions of the Elmwood Commercial Preservation and Eviction Protection Ordinance ("Measure I") because Measure "N" did not repeal the provisions of Measure "I" which so provide.

NATALIE E. WEST
City Attorney

By 

MANUELA SCOTT
Senior Attorney

MS:dp

CITY OF BERKELEY

Memorandum

DATE: June 3, 1983

TO: Edward Badgett, Assistant City Manager, Planning &
Community Development

FROM: Attn: Jacqueline Foster, Director, Rent Stabilization
Board

Natalie E. West, City Attorney

SUBJECT:

SCOPE AND VALIDITY OF CONFLICT OF INTEREST PROVISION IN
CHARTER AMENDMENT ESTABLISHING AN ELECTED RENT BOARD
Page 1

INTRODUCTION

The Berkeley City Charter was amended by the voters at the November 1982 municipal election to provide for an elected Rent Stabilization Board. ("Rent Board") composed of nine commissioners. When it takes office in July 1984, the elected Rent Board will replace the existing Rent Board composed of nine commissioners appointed by each member of the Berkeley City Council. In two prior opinions we addressed questions regarding the timing of this election, the length of the term of office of the Rent Board commissioners, the effective date of various provisions of the charter amendment, the scope of the elected Rent Board's powers, and the nature of the relationship between the elected Rent Board, the City Council, the City Manager and other city departments both generally and with particular respect to the manner in which Rent Board staff will be appointed, disciplined and discharged.

You have asked us to address the following additional issues:

ISSUES:

1. What is the effect of Section 121(3) of the Charter Amendment regarding conflicts of interest of Rent Board Commissioners?
2. Is the provision legally enforceable to the extent that it treats landlords differently from tenants?

CONCLUSIONS

1. Rent Board Commissioners who are Berkeley landlords with rents controlled under a Berkeley residential rent stabilization ordinance must disqualify themselves whenever it is reasonably

CITY OF BERKELEY

DATE: June 3, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning &
Community Development
Attn: Jacqueline Foster, Director, Rent Stabilization
Board
FROM: Natalie E. West, City Attorney

SUBJECT:

SCOPE AND VALIDITY OF CONFLICT OF INTEREST PROVISION IN
CHARTER AMENDMENT ESTABLISHING AN ELECTED RENT BOARD
Page 2

foreseeable that a decision by the elected Rent Board will have a material financial effect on their financial interests. Tenant commissioners may participate in all decisions except a petition for an individual rent adjustment relating to their own rental unit.

2. We have concluded that the conflict of interest provision does not violate the equal protection or due process rights of landlords with controlled rents but is rationally related to legitimate governmental interests in ensuring that the rent stabilization ordinance is construed in accordance with its legislative purposes.

ANALYSIS1. Conflict of Interest

Section 121(3) of the charter amendment adopts the conflict of interest provisions of state and local law but goes on to define these provisions for purposes of the membership of the elected Rent Board as follows.

Owners of rental property with rents controlled by the Berkeley Ordinance shall constitute the rental industry for purposes of this Article. Tenants constitute a large and significant part of the general public. Decisions by the Board have a material financial effect on members of the rental industry different from the general public.

As we will explain in greater detail below, the effect of these provisions is to disqualify Berkeley landlords whose rents are controlled under the Rent Stabilization ordinance from participating in making any decisions which might materially affect their financial interests.

CITY OF BERKELEY

DATE: June 3, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning &
Community Development

FROM: Attn: Jacqueline Foster, Director, Rent Stabilization
Board

Natalie E. West, City Attorney

SUBJECT:

SCOPE AND VALIDITY OF CONFLICT OF INTEREST PROVISION IN
CHARTER AMENDMENT ESTABLISHING AN ELECTED RENT BOARD
Page 3

The relevant conflict of interest provisions of state law are found in the Political Reform Act of 1974. (Government Code Sections 81000 et. seq.) Specifically, Government Code Section 87100 prohibits public officials from influencing, participating in or making a governmental decision in which they have a financial interest. A public official has such a financial interest if "it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally," on specified financial interests of the public official which include an interest in real property worth more than one thousand dollars (\$1000) (Government Code Section 87103(b)). Thus, under the provisions of the Political Reform Act, Berkeley landlords with controlled rents would be excluded from participating on the Board if decisions of the Board have a "material financial effect" on their property which differs from "the effect on the public generally."

A. Effect on The Public Generally

By virtue of a regulation issued by the Fair Political Practices Commission ("FPPC"), members of a regulated industry are not considered members of the "public generally" and thus may not make decisions on a regulating board which materially affect their financial interest unless the regulating ordinance reflects a legislative intent that such members are intended to represent the interest of the regulated industry and that such representation will serve the public interest (2 Cal.Admin. Code Section 18703(c)). In 1980 the FPPC issued an opinion concluding that the City of Berkeley's Rent Stabilization ordinance reflected a legislative intent to permit participation by landlords with controlled rents on the Rent Board. The FPPC's conclusion was based on Section 6(r) of the City of Berkeley's

CITY OF BERKELEY

DATE: June 3, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning &
Community Development

FROM: Attn: Jacqueline Foster, Director, Rent Stabilization
Board

Natalie E. West, City Attorney

SUBJECT:

SCOPE AND VALIDITY OF CONFLICT OF INTEREST PROVISION IN
CHARTER AMENDMENT ESTABLISHING AN ELECTED RENT BOARD
Page 4

rent stabilization ordinance which provides that Rent Board
commisisoners need not be disqualified from voting "solely on the
basis of their status as a landlord or tenant."

As we have already noted, Section 121(3) of the charter
amendment, defines owners of rental property with controlled
rents as members of the rental industry, distinguishes them from
tenants who are deemed a large and significant segment of the
general public, and states that the decisions of the Board have
an effect on members of the regulated industry which differs from
that on the public generally. Thus, the literal language of the
section appears to reflect a clear legislative intent to
supercede Section 6(r) of the rent stabilization ordinance as
construed by the FPPC and to stress that landlord representation
on the elected Rent Board as advocates of the regulated industry
is not deemed necessary to further the public interest. This
conclusion is further buttressed by the fact that the ballot
arguments both in support of and in opposition to the measure ^{1/}
proposing the charter amendment strenuously debated the legal
and practical effects of the FPCC opinion regarding landlord
representation on the Board and assumed that the amendment would
overrule the opinion.

^{1/} Supporters of the measure argued that the conflict of interest
provision was necessary to overrule the FPPC decision and
opponents claimed that the measure was illegal because it
overruled this opinion.

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DATE: June 3, 1983

Memorandum

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FROM: Attn: Jacqueline Foster, Director, Rent Stabilization
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Natalie E. West, City Attorney

SUBJECT:

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Accordingly we conclude that the charter amendment does not reflect any legislative intent to permit landlord representation on the elected Rent Stabilization Board to further the interests of the regulated industry and thus under 2 Cal. Admin. Code Section 18703, the effect of Board decisions on the regulated industry differs from that on members of the general public. ^{2/}

B. Material Financial Effect

A decision has a "material financial effect" on a public official's financial interest if it is reasonably foreseeable that the decision will have a significant effect on the official's real property. (2 Cal.Admin. Code

^{2/} Previous opinions of the FPPC have made it clear that tenants constitute a significant segment of the general public and thus language in the charter amendment which so provides is merely declaratory of existing law and appears designed to distinguish landlords from this significant segment of the public.

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Section 18702(a)). Determining whether the effect is a significant one under a FPPC regulation requires consideration of a set of monetary factors (2 Cal. Admin. Code Section 18702.) ^{3/} Although application of these factors to Berkeley landlords with controlled rents would result in disqualifying them from certain decisions rendered by the Board, most notably, the establishment of an annual general adjustment, such landlords would not necessarily be precluded from participating on all ^{4/} decisions rendered by the Board under this regulation alone.

^{3/} These factors include whether the income producing potential of the property would be increased or reduced by five per cent per month (2 Cal. Admin. Code Section 18702(b)(2)(A)(2)).

^{4/} The last sentence of the conflict of interest provision is ambiguous. It provides, "[d]ecisions by the Board have a material financial effect on members of the rental industry different from the general public." This sentence could mean all decisions of the Board have such a material financial effect or it could mean that certain decisions of the Board have such a material financial effect. If we were to adopt the construction that regulated landlords may not participate in any decisions, the practical effect would be to render such landlords ineligible for membership on the board although the charter amendment section regarding eligibility (Section 121 (1)) does not so provide. The ballot arguments on the conflict of interest provision focused primarily on the merits of overruling the FPPC opinion and do not mention excluding landlords from participating on the Board. We therefore decline to adopt such a broad construction of the sentence.

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In short, we conclude that regulated landlords are not precluded from membership on the Board but are disqualified from participating in particular decisions which may materially affect their financial interests.

2. The Validity of the Conflict of Interest Provision

We next address concerns that a conflict of interest provision which disqualifies regulated landlords from participating in decisions of the Rent Board which may materially affect their financial interests is violative of such landlords rights to equal protection and due process.

A. Equal Protection

As we have already observed, tenants are deemed a significant segment of the public generally and thus need not disqualify themselves from decisions made by the Board except where the proceeding involves an individual rent adjustment petition affecting the tenant's particular rental unit. Accordingly we address whether this differentiation between landlords and tenants is violative of equal protection.

In Friedman v. Rogers (1979) 440 U.S. 1, the United States Supreme Court considered a due process and equal protection challenge to a Texas law mandating that four out of six members of the Texas Board of Optometry which regulates the practice of optometry be members of the Texas Optometry Association. ("TOA") The TOA denies membership to "commercial optometrists". The

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commercial optometrist plaintiff contended that he was denied equal protection and due process because four of the six members of the regulatory board were "professional" optometrists whose interests were antagonistic to "commercial" optometrists like himself. In rejecting this claim, the Court noted that where local economic regulations have been challenged solely on equal protection grounds, it has consistently deferred to legislative determinations that it is desirable to differentiate between different classes of persons. (Id at 17.) Unless the classification is inherently suspect or invades fundamental personal rights, the discriminatory classification is upheld if it is rationally related to a legitimate governmental interest (Id).

The Court concluded that the Texas legislature had a rational basis for establishing a Board dominated by professional optometrists because, based on its experience with both professional and commercial optometrists, it reasonably concluded that professional optometrists had demonstrated consistent support for the rules adopted by the Legislature which the Texas Board of Optometry was charged with enforcing. (Id at 18.)

Firstly, as in Friedman, the experience of Berkeley voters with the landlord members of the Board would be an adequate basis on which to exclude participation by such landlords. ^{5/} Secondly,

^{5/} The ballot arguments in support of the measure argued and Berkeley voters apparently agreed that the presence of landlords on the Rent Board had resulted in decisions contrary to the intent of the rent stabilization ordinance.

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as one California court recently noted, "[s]trong policy arguments may be made as to the desirability of eliminating, or severely restricting, industry members from boards There are meritorious arguments that many industry-dominated boards do not adequately serve consumer's interests." (Consumers Union of U.S. v. California Milk Producers Advisory Board (1978) 82 Cal.App.3d 433.)

Thirdly, the conflict of interest provision in the charter amendment does not mandate tenant participation on the Board, it merely excludes regulated landlords from participating in certain decisions of the Board and thus the effect of the discriminatory classification is far less prejudicial to regulated landlords than it was to the commercial optometrists in Friedman.

Finally, we note that the interest of even the smallest landlord in the annual adjustment is significantly different from that of a tenant since this decision affects not only the income of this landlord but the overall value of the property and thus the profit he or she can realize on resale. For all these reasons, we conclude that the conflict of interest provision does not result in depriving landlords of equal protection but is reasonably related to legitimate governmental interests in ensuring that the rent stabilization ordinance is construed in accordance with its legislative purposes.

B. Procedural Due Process

We next examine whether the disqualification of landlord commissioners from participation in certain decisions made by the Board results in depriving landlords of procedural due process because the possible presence of tenant commissioners with a pecuniary interest in that decision renders the Board unconstitutionally biased.

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At the outset it is important to note that the Rent Board exercises both quasi-legislative power, when it adopts standards further interpreting the Rent Stabilization Ordinance, and quasi-adjudicatory powers when it applies those standards to determine the rights of particular parties before it. Issuing regulations and establishing the annual adjustment is an example of an exercise of the former, the Individual Rent Adjustment process is an example of an exercise of the latter. We examine the due process claim in light of both these Board functions.

1. Quasi-legislative Power

The United States Supreme Court's decision in Friedman v. Rogers, supra, is virtually dispositive of this issue. As we have already observed, the plaintiff in Friedman made the undisputed claim that the commercial optometrists on the one hand, and professional optometrists on the other hand had antagonistic economic interests. For this reason, argued plaintiff, the statutorily mandated majority of professional optometrists on the Board of Optometry (four out of six) violated the due process rights of commercial optometrists by rendering the Board biased against commercial optometrists. The court rejected this claim holding that the right to due process did not entitle the commercial optometrists to be regulated by a Board sympathetic to them although it did entitle the commercial optometrists to a fair and impartial hearing in any disciplinary hearing conducted against them. The Court held, in effect, that procedural due process required an impartial hearing only in an adjudicatory proceeding. California cases have likewise held that impartiality is a constitutional prerequisite in an adjudicatory hearing. (See e.g. American Motor Sales Corporation v. New Motor Vehicle Board (1977) 69 Cal.App.3d 983.) Indeed, in Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129, 145-147, the only

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California case to our knowledge in which a legislative act was challenged on similar due process grounds, the California Supreme Court rejected the claim that the rent stabilization ordinance was unconstitutional because the majority of the electorate were tenants. Accordingly, we conclude that the exercise of quasi-legislative power by a Board which excludes affected landlords from making certain decisions is not violative of the due process rights of those landlords.

2. Quasi-adjudicatory Hearings

As we noted earlier when we construed the conflict of interest provision of the charter amendment, regulated landlords will be disqualified from participating in particular decisions of the Board which may materially affect their financial interests. When the Board adopts regulations and other standards such as the general adjustment, its decisions are of broad and general applicability, whereas the effect of decisions on individual rent adjustment petitions is more likely to be confined to the parties before the Board unless the Board decision also enunciates a new rule interpreting the rent stabilization ordinance which is of general applicability. Thus, it is more likely that particular quasi-legislative actions of the Board will require disqualification of regulated landlord members than that quasi-adjudicatory actions will require such disqualifications.

Accordingly, we consider whether the possible disqualification of regulated landlord members of the Board will be violative of the due process rights of landlords who are parties to adjudicatory proceedings before the Board.

In Friedman v. Rogers, supra, 440 U.S. at 15-16, the court held that the mere fact that the economic interests of commercial optometrists and professional optometrists were antagonistic did

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not compel the conclusion that a Board dominated by the latter is likely to act in excess of its authority and thus violates the due process rights of commercial optometrists. The Court noted that commercial optometrists were still free to assert that, in a particular adjudicatory proceeding, the pecuniary interests of Board members would render the hearing unfair citing the facts in Gibson v. Berryhill (1973) 411 U.S. 564 as an example.

In Gibson, supra, the Alabama Optometric Association made up exclusively of independent practitioners charged Leo Optical Company with the unlawful practice of optometry before the Alabama Optometry Board whose membership was also restricted solely to independent practitioners. The Board suspended hearing the charges and then sued successfully to obtain an injunction against Leo Optical's practice of optometry. When the case was appealed the Board reactivated its administrative proceedings (Id at 567-569.) Leo Optical Company enjoined the proceedings on the grounds that each member of the Board stood to profit personally if Leo Optical's substantial practice in Alabama was suspended and thus, that the pecuniary interests of the Board members rendered the adjudicatory proceedings before the Board violative of due process. (Id at 571) The Court agreed. (Id 579.)

Thus, by virtue of the United States Supreme Court decisions we have discussed above, the mere fact that regulated landlords may be disqualified from participating in some individual rent adjustment petitions does not result in rendering the Board so unconstitutionally biased as to deprive landlords who are parties to Board proceedings of their rights to procedural due process. We do not preclude the possibility that a particular adjudicatory panel of the Board deciding a particular case may be properly challenged based on special circumstances which exist at the time, including the exact nature and degree of the pecuniary interests of the members which are claimed to render the panel

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SUBJECT:

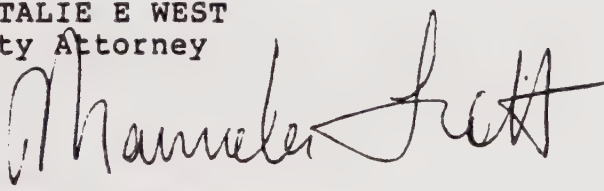
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partial, the number of members so affected and whether there is a sufficiently close nexus between the issues presented in the proceeding before the Board and the pecuniary interests of particular Board members.

Accordingly, we conclude that the possible disqualification of regulated landlord members from Board proceedings related to individual rent adjustment petitions, absent special circumstances, does not deprive landlords who are parties to such proceedings of due process.

NATALIE E WEST
City Attorney

By



MANUELA SCOTT
Senior Attorney

MS:DP

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DATE: June 16, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning and
Community DevelopmentAttn: Jacqueline Foster, Director, Rent Stabilization
Board

FROM:

Natalie E. West, City Attorney

SUBJECT:

ANALYSIS OF CHARTER AMENDMENT PROVISIONS REGARDING STAFFING
OF THE ELECTED RENT STABILIZATION BOARD AND RELATIONSHIP
BETWEEN IT AND OTHER CITY DEPARTMENTS AND THE CITY COUNCILINTRODUCTION

The Charter of the City of Berkeley was amended by the voters at the November 1982 municipal election to provide for an Elected Rent Stabilization Board ("Rent Board") composed of nine commissioners. In a previous opinion we concluded that the members of the first Board will be elected at the June 1984 primary election, that the five commissioners who are elected with the fewest votes will serve a term which expires in November 1986 and that the terms of the remaining commissioners will expire in November 1988. Once the Board is elected it will replace the existing Rent Board which is composed of nine commissioners appointed by each member of the City Council. In our prior opinion we also concluded that by the terms of the Charter Amendment, the Elected Rent Board was charged with responsibility for administering any ordinance which regulates residential rents and evictions but that it did not have the authority to administer commercial rents or evictions.

You have asked us to address the following additional issues raised by various provisions of the Charter Amendment.

ISSUES

1. What is the effect of Section 123(2) of the Charter Amendment which authorizes the elected Rent Board to hire and fire its own staff?
2. What is the relationship between the Rent Board, the City Council, the City Manager's Office and the City Attorney's Office?

CONCLUSIONS

1. We have construed Section 123(2) of the Charter Amendment in light of Government Code Section 45007 which precludes the withdrawal of appointed employees, other than full-time Department heads from the City's civil service system without a two-thirds vote of the people and we have concluded that the charter amendment will have the following effects:

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SUBJECT: ANALYSIS OF CHARTER AMENDMENT PROVISIONS REGARDING STAFFING
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- (a) The power to appoint, discipline and discharge all Rent Board staff has been transferred from the City Manager to the elected Rent Board;
 - (b) The position of Rent Board director has been withdrawn from the civil service system since, by virtue of the charter amendment, the Rent Board director is directly responsible to the Rent Board and is thus a "regular full-time city department head" within the meaning of Government Code Section 45007; and as such, is exempted from this statute's two-thirds vote requirement.
 - (c) The remaining Rent Board staff continue to be part of the City's civil service system because the charter amendment did not receive a two-thirds vote of the people, and thus, by virtue of Government Code Section 45007, was not legally effective in withdrawing these appointed employees from the City's civil service system;
 - (d) New positions created by the City Council will not be covered by civil service protections, however such positions may not be created in order to replace existing positions in an attempt to evade the protections afforded employees by Government Code Section 45007.
2. (a) Since Rent Board staff other than the Director will continue to be part of the City's civil service system, the salary classifications, merit selection methods, recall rights, and "bumping rights" of such employees will be the same as those of other City employees and will be established by the Personnel Board, City Manager and City Council as provided in the City charter and implementing ordinances.
- (b) For purposes of the Meyers-Miliias Brown Act (Government Code Sections 3500 et seq.) the City Manager may continue to represent the City of Berkeley in negotiating the wages, hours, and other terms and conditions of employment of any Rent Board employees represented by any

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recognized public employee organization. However, any memorandum of understanding executed between the City of Berkeley and such recognized public employee organization may not abrogate any rights conferred on the Rent Board by the charter amendment including the power to appoint, discipline and discharge Rent Board staff.

(c) In all other respects, the Rent Board and its staff will operate under the same constraints as any other Board and Commission in the City.

ANALYSIS1. Rent Board Staff

Section 123(2) of the charter amendment provides in pertinent part as follows:

"The Board shall have the power to hire and fire staff notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of the City of Berkeley Charter."

Article VII Sections 28(b) and (c) authorize the City Manager to appoint, discipline and remove all officers and employees of the City and to exercise control over all City departments. Thus, it is clear from the literal language of the charter amendment, when it is read in conjunction with Article VII, Sections 28(b) and (c), that the voters intended to transfer the authority to appoint, discipline and remove the Rent Board staff from the City Manager to the elected Rent Board. This conclusion is further supported by the fact that the ballot arguments both in support and in opposition to the measure assumed that it would have this effect.

The reference to Section 119 of the City Charter appears to be intended to withdraw the Rent Board staff from the City of Berkeley's civil service system which, pursuant to this section and ordinances implementing it, is administered by the City Manager and City Council acting on recommendations from the

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Personnel Board. In construing this provision we consider the effect of provisions of state law governing municipal civil service systems (Government Code Sections 45000-45010).

A. Government Code Section 45007

Government Code Section 45001 authorizes a city to adopt a civil service system. However Government Code section 45007 limits the city's ability to withdraw employees from the system. That section provides:

After inclusion in the system, any departments or appointive officers or employees shall not be withdrawn, either by an outright repeal of the civil service ordinance or otherwise, unless the withdrawal has been submitted to the city electors at a special or regular municipal election and approved by two-thirds of those voting on the proposition, except that regular full-time city department heads, may be withdrawn by a majority vote of the city council. (emphasis supplied.)

The charter amendment did not receive the votes of two-thirds of the people.

B. Its Application to Charter Cities

We first consider whether Government Code Section 45007 applies to charter cities. The threshold question which must be resolved in considering this issue is whether Government Code section 45007 conflicts with the City charter. We conclude that such a conflict does exist because section 119 of the Charter allows the people to amend the Charter by majority vote in order to exempt positions from civil service (Art. XIII, Section 92(7), Art. XVI, Section 119) whereas Government Code Section 45007 requires a two-thirds vote. Accordingly, we next address whether Government Code Section 45007 may be applied to a charter city in the face of charter provisions to the contrary.

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There are very few cases which have examined the effect of Government Code Section 45007. The only one to consider its applicability to a charter city such as the City of Berkeley harmonized the provisions of the city charter and the language of this section and thus, did not resolve whether this section would prevail over charter provisions to the contrary. (See Schildwachter v. City of Compton (1939) 14 Cal.2d 342.)

To determine whether Section 45007 applies when there are charter provisions to the contrary, we must examine principles of municipal law regarding the powers of charter cities. This is a rapidly developing area in which the courts have treated an ever-expanding number of issues as ones of statewide concern and have concluded that charter provisions must yield to state law provisions to the contrary. (See Bishop v. City of San Jose (1969) 1 Cal.3d 56, 61.) However, the cases in this area do not establish clear general principles which can be readily applied to new facts and circumstances but continually stress that resolving whether municipal legislation addresses issues of statewide concern or involves a purely local "municipal affair" depends on the facts of each case (Professional Fire Fighters, Inc. v. City of Los Angeles (1963) 60 Cal.2d 276; 294. Accord, Baggett v. Gates (1982) 32 Cal.2d 128, 136, f.n. 10; Bishop v. City of San Jose, supra, 1 Cal.3d 62.)

As we have already observed, the conflict between the city charter and Government Code section 45007 is created because the city charter provides that any of its provisions may be amended by a majority vote of the people whereas Government Code section 45007 imposes a two-thirds vote requirement. Thus, we first assess whether charter provisions which govern the manner in which the charter will be amended constitute municipal affairs and, for this reason, prevail over state statutes to the contrary. This very question was addressed by the California Court of Appeal for the first appellate district in District Elections of Supervisors Committee For 5th v. Thomas M. O'Connor (1978) 78 Cal.App.3d 261. The Court held that charter amendment procedures were a matter of statewide concern and that local provisions regarding charter amendment procedures must yield to state law provisions to the contrary. (Id at 274.) Thus,

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Government Code Section 45007 would be deemed applicable to a charter city if the conflict with the Berkeley City Charter were regarded as a conflict merely over the applicable charter amendment procedure.

We next consider whether the city charter would prevail over Government Code Section 45007 in light of the fact that the conflict is over the manner of withdrawing employees from the civil service system and the California constitution confers "plenary authority" on cities to provide in their charters for the "compensation, method of appointment, qualifications, tenure of office and removal" of their employees. (Cal.Const. Art. XI, Section 5, subd.(b)(4).) Despite the sweeping language of this section, recent decisions have applied broad statutory schemes affecting the rights of public employees to charter cities (see e.g. Baggett v. Gates, supra, 32 Cal.3d 137-138) although a statute regulating particular employment qualifications was struck down as violative of the home rule provision of Article XI Section 5. (See Ector v. City of Torrance (1973) 10 Cal.3d 129, 132-133.) Thus, the courts have held that charter cities are subject to the provisions of the Meyers-Miliias Brown Act regulating labor relations (Huntington Beach Police Officers Assn. v. City of Huntington Beach (1976) 589 Cal.App.3d 492, 500) and the Public Safety Officers' Procedural Bill of Rights Act (Baggett v. Gates, supra, 32 Cal.3d 128, 137-140.)

In Baggett, the California Supreme Court set out the relevant principles to be applied in construing the home rule provision of the constitution. "[G]eneral laws seeking to accomplish an objective of statewide concern may prevail over conflicting local regulations even if they impinge to a limited extent upon some phase of local control." (Id at 139.) Where there is doubt as to whether a matter is of concern to both municipalities and the state, the doubt must be resolved in favor of the legislative authority of the state (Id at 140). Laws which are designed to secure basic rights and protections to a segment of public employees do not deprive the local government of the right to manage and control their employees but only impinge on it to a limited extent (Id at 139-140.) Thus, such laws may be applied to charter cities (See id.)

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Like the Meyers-Miliias Brown Act and the Public Safety Officers' Procedural Bill of Rights, the civil service serves important governmental interests in maintaining fair and stable employment relationships. Civil service systems are designed to substitute the merit system for the spoils system in the appointment of public employees (Barry v. Johnson (1916) 30 Cal.App. 165, 169.) At the state level, the California Constitution mandates the establishment of a merit system, (Cal. Const. art VII, Section 3.) and local governments are authorized to establish a civil service system which provides for the selection, employment, classification, advancement, suspension and discharge of appointive officers and employees pursuant to Government Code Section 45001.

As in the case of most such local systems, Berkeley employees in positions which are not exempt from civil service may not be terminated except for cause and have other protections including the right to "bump" less senior employees and the right to be recalled ahead of other eligible persons on a civil service list in the event of a lay off.

The importance of the state's interest in affording municipal employees such procedural protections is reflected in Government Code Section 45007 which prohibits the withdrawal of positions from the system, once included, without a two-third vote of the people. The restriction on the withdrawal of municipal employees from the city's civil service system embodied in Government Code Section 45007 does not deprive the city of the plenary authority to manage and control its employees but merely impinges on it to a limited extent. (See Baggett v. Gates, *supra*, 32 Cal.3d 139.) Accordingly, we conclude that Government Code Section 45007 is applicable to Berkeley even though it is a charter city and thus, we must construe Section 123(2) of the charter amendment in light of the limitations contained in Government Code Section 45007.

C. Article XVII Section 123(2) construed in light of Government Code Section 45007

Although section 123(2) of the charter amendment purported to exempt Rent Board employees from the civil service system, it did

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not receive the votes of two-thirds of the voters. We thus conclude that, except for the position of Rent Board director (discussed separately below), the charter amendment did not withdraw Rent Board employees from the city's civil service system or render their positions ones which are terminable at the will of the elected Rent Board.

"Regular full-time department heads" are an exception to the two-thirds vote rule and may be withdrawn from the city civil service system by a majority vote of the city council (Government Code Section 45007). Moreover, a position can be converted into a position of a full-time department head and withdrawn from the civil service system by concurrent actions (Galligan v. City of San Bruno (1982) 132 Cal.App.3d 869, 874.)

Presently, the Rent Board director is not a department head but is responsible to the Chief of Housing Operations, who in turn is responsible to the Assistant City Manager for Planning and Community Development, who is a department head.

The charter amendment provides that the Rent Board staff may be hired and fired by the elected Rent Board itself and thus the Rent Board director will now be directly responsible to the elected Rent Board.

Although the term "regular full-time department head" used in Government Code Section 45007 is not further defined we conclude that it was intended to apply to an official such as the Rent Board director who is directly responsible to elected officials, thus, must enjoy their trust and confidence, and for this reason to provide that a city would not be required to obtain a vote of two-thirds of the people in order to exempt such a position from civil service protections.

Although Government Code Section 45007 authorizes the City Council to withdraw the positions of such department heads from the civil service system, such withdrawal can also be accomplished by the people exercising the power of initiative (58 Ops. Atty. Gen. 104, 107-108.) Thus, we conclude that the charter amendment intended to withdraw the position of Rent Board

CITY OF BERKELEY

DATE: June 16, 1983

Memorandum

TO: Edward Badgett, Assistant City Manager, Planning and
Community Development
Attn: Jacqueline Foster, Director, Rent Stabilization
Board

FROM: Natalie E. West, City Attorney

SUBJECT: ANALYSIS OF CHARTER AMENDMENT PROVISIONS REGARDING STAFFING
OF THE ELECTED RENT STABILIZATION BOARD AND RELATIONSHIP
BETWEEN IT AND OTHER CITY DEPARTMENTS AND THE CITY COUNCIL
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director from the civil service system and that Government Code 45007 did not require a two-thirds vote of the people in order to accomplish this result.

New positions to staff the Rent Board can only be created by the City Council by virtue of Article VII Section 31. They will be exempt from civil service by virtue of the Section 123(2) of the charter amendment which exempts Rent Board staff from the purview of the civil service provisions of the charter (See Section 119). However new positions may not be created to replace existing positions with substantially similar duties in an attempt to evade civil service protections (See Rextrew v. City of Huntington Park (1942) 20 Cal.2d 630, 633).

D. Vested Rights

We next consider whether the withdrawal of the position of Rent Board director would constitute a violation of the vested rights of the present Rent Board director. We conclude that it does not. "[I]t is well-settled in California that public employment is not held by contract but by statute and that, insofar as the duration of such employment is concerned, no employee has a vested contractual right to continue beyond the time or contrary to the terms and conditions fixed by law." (Miller v. State of California (1977) 18 Cal.3d 808, 813. "Nor is any vested contractual right conferred on the public employee because he occupies a civil service position since it is equally well settled that '[t]he terms and conditions of civil service employment are fixed by statute and not by contract.'" (Id at 814.) These terms may be altered by statute. (Id.)

E. Transfer of Power to Appoint Discharge and Discipline Rent Board Staff

As we noted at the outset, Section 123(2) of the charter amendment purported to exempt itself from two sets of charter provisions: 1) Article VII Section VII Sections 28(b) and (c), governing the power of the City Manager to appoint, discipline and discharge all city employees and to control all city departments; and 2) Article XVI Section 119, authorizing the

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establishment of a merit selection system for city employees. We have already concluded that by virtue of Government Code Section 45007, the charter amendment may not withdraw Rent Board staff, other than the Rent Board director, from the civil service system absent a two-thirds vote of the people. We now consider whether the transfer of the discipline, discharge and appointing power from the City Manager to the Rent Board is subject to this two-thirds vote requirements and conclude that it is not. In Newport Beach Fire and Police Protective League v. City Council (1961) 189 Cal.App.2d 17, the court construed a similar two-thirds vote requirement contained in a city charter and concluded that amendment of a civil service ordinance which changed the rights of employees within the civil service system was not subject to a two-thirds vote requirement as long as the amendment did not purport to withdraw any employees from the system. (See also Fair Political Practices Commission v. State Personnel Board (1978) 77 Cal.App.3d 52, 56 holding that Fair Political Practices Commissions has the power to appoint and discharge employees within existing civil service classifications established by the State Civil Service System Commission pursuant to the California Constitution.)

In short, we conclude that although Rent Board staff other than the Rent Board director may not be withdrawn from the civil service system a transfer of the power to appoint, discipline and discharge Rent Board staff from the City Manager to the elected Rent Board merely constitutes a change in the terms and conditions of employment of these employees and thus does ^{1/}not require a two-thirds vote of the people to be effective.

F. The Effect of the Meyers-Milias Brown Act

Under the Meyers-Milias Brown Act (Government Code Sections 3500 et seq.) public employees have the right to be represented by a

^{1/} The Rent Board may delegate this power to the Rent Board director.

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recognized public employee organization (union) to have their public entity employer "meet and confer" with such an organization prior to implementing changes in the terms and conditions of their employments and to treat the provisions of any "memorandum of understanding" executed between their union and employer as a binding contract.

A charter amendment which changes the terms and conditions of employment of public employees represented by a recognized public employee organization is not subject to the "meet and confer" obligations of the Meyers-Milias Brown Act (San Francisco Fire Fighters Assn. v. Board of Supervisors (1979) 96 Cal.App.3d 538, 547-550) however, it may not abrogate the provisions of an existing memorandum of understanding without a substantial justification. (See Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296, 304-314.) Since the existing memorandum of understanding between unions representing Rent Board staff and the City of Berkeley will expire in June 1984, and the term of office of the elected Rent Board will not commence until July 1, 1984 the transfer of the appointing and discharge power from the City Manager to the elected Rent Board will not violate the provisions of any existing memorandum of understanding conferring such power on the City Manager.

Accordingly we conclude that the position of Rent Board director has been withdrawn from the Civil Service system, that the remaining Rent Board staff remain part of the civil service system and that the power to appoint, discipline and discharge Rent Board staff has been transferred from the City Manager to the elected Rent Board.

2. Relationship between Elected Rent Board, City Council, City Manager, and City Attorney

In the previous section we have concluded that, except for the Rent Board director, the Rent Board staff cannot be withdrawn from the city's civil service system. Thus, the rights of the individuals occupying these positions will be determined by the

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personnel rules of the City of Berkeley reflected in various ordinances, such as the personnel ordinance, adopted by the City Council acting on the recommendations of the Personnel Board and the City Manager. Accordingly the City Manager, City Council and Personnel Board will perform the same functions with respect to these Rent Board staff as they perform with respect to other city employees except that the final power to appoint, discipline and discharge Rent Board staff will reside in the elected Rent Board and not the City Manager.

Similarly, the City Manager will represent the City of Berkeley in negotiating the terms and conditions of employment of all Rent Board staff represented by recognized public employee organizations pursuant to the Meyers-Milius Brown Act since many of the rules of the City's civil service system are the products of such negotiations and are subject to "meet and confer" obligations (See Los Angeles County Civil Service Commission v. Superior Court (1978) 23 Cal.3d 55, 59-65.) In other words, since Rent Board staff, except for the Rent Board director, continue to be part of the city's civil service system, and the rules of that system for all employees are established in part through the negotiation and execution of memoranda of understanding, the City Manager will continue to negotiate these rules on behalf of the City of Berkeley with respect to all represented public employees including Rent Board employees.

We stress however, that the Elected Rent Board will be ultimately responsible for selecting, disciplining and discharging Rent Board staff within any constraints imposed by the general rules of the civil service system and by any other provisions of law. Thus, the rules of the civil service system and the provisions of any memoranda of understanding may not abrogate any powers granted the Elected Rent Board by the charter amendment.

In all other respects it would appear that the Rent Board would be treated like any other department of the City. For instance, the City Attorney is still obligated by virtue of Section 113 of the Charter to represent the City of Berkeley's interests in any litigation affecting the Rent Board since the charter amendment did not except itself from the purview of Section 113.

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Similarly, although the Rent Board is authorized to finance its expenses by imposing registration fees, the budget of the Elected Rent Board would continue to be part of the annual budget submitted by the City Manager to the Council for approval pursuant to Article VII Sections 28(g) and 33 since the charter amendment did not exempt itself from these provisions of the charter. Thus, in most respects, the Elected Rent Board is similar to the Board of Library Trustees which hires its staff through the city civil service system but submits its budget as part of the overall city budget. The exact parameters of this relationship cannot be defined with further specificity because the charter amendment does not offer any further guidance in this regard and because it is difficult to anticipate and resolve every issue which may arise in this area.

NATALIE E. WEST
City Attorney

By



MANUELA SCOTT
Senior Attorney

MS:dp

**A GLOSSARY OF
RENT CONTROL TERMS**



GLOSSARY

ANNUAL GENERAL ADJUSTMENT (AGA): The annual across-the-board rent increase, decrease or freeze in the rents approved by the Rent Stabilization Board.

BASE RENT CEILING: The base rent ceiling is the lawfully May 1980 rent except for the previously exempt three and four units where one unit was owner occupied. The base rent ceiling for these units is the lawfully December 31, 1981 rent.

CONSUMER PRICE INDEX (CPI): An index measuring the change in the cost of typical wage-earner purchases for goods and services expressed as a percentage of the cost of these same goods and services in same base period. Also called "cost of living index". Indexing - for rent control purposes - this refers to adjusting the operating net income in order to reflect the rate of inflation.

EVICTION: The process by which a rental property owner forces a tenant to move from a rental unit. The eviction process includes initial notices to move, a lawsuit in court and final eviction papers from the Sheriff.

FAIR RETURN: The Rent Stabilization Board's formula for fair return is called Maintenance of Net Operating Income. Net Operating Income (NOI) is gross rents minus operating expenses and capital improvements. Under the Fair Return standard, rental property owners are entitled to maintain their NOI for 1979.

FEE WAIVERS FOR PETITIONS: Board regulation (1204) which permits the petitioners to file an application to waive filing fees for individual rent adjustment petitions if their income is equal or less than 150% of the current poverty threshold annually established by the Community Services Administration and they and their family do not have assets which exceed \$1,750 or \$3,000 in the case of a family consisting of two or more persons, one of whom is age 60 or over.

INDIVIDUAL RENT ADJUSTMENT (IRA) APPEAL: Tenants or rental property owners who disagree with the decisions issued in an IRA hearing may appeal the decision to a three member panel of Rent Stabilization Board members.

INDIVIDUAL RENT ADJUSTMENT: Rental property owners whose costs exceed what is allowed in the annual general adjustment and tenants who feel they are being illegally overcharged may apply for individual hearings for rent increases or decreases through the IRA process.

LEASE/MONTH TO MONTH AGREEMENT: These are two common types of written rental agreements. Some rental agreements are oral. All are legally binding. On a month to month agreement, either tenant or landlord may change the agreement with 30 days' written notice. Under a lease, the terms of the agreement are set for a specific period of time(i.e., one year).

NET OPERATING INCOME (NOI): Gross rents minus operating expenses and capital improvements.

PETITIONS: The forms used by tenants and landlords to apply for individual rent hearings.

PROPERLY REGISTERED UNITS: A rental unit is properly registered if all registration forms have been filed and all required registration fees, penalties and interest have been paid for all covered units on the same parcel. If the landlord is unable to supply required information she/he may utilize the 801 registration review process.

RENT: Any money or services received by a rental property owner in exchange for the use and occupancy of a rental unit. This includes services provided by an on-site manager or handyperson.

RENT INCREASES: Two types are allowed under the Berkeley law; the annual general adjustment and individual rent adjustments. Both require 30 days' written notice on Rent Stabilization Program forms. If the tenants are under a lease, the rent cannot be increased until the end of the lease.

RENTAL UNIT: A room, apartment, flat, house or other living space rented or available for rent.

WAIVER OF PENALTIES FOR REGISTRATION: Board regulation allowing the waiver of penalties and interest on delinquent registration fees. In specific instances penalties may be waived by staff. Generally Board Registration Committee reviews such request and makes recommendation to the full Board. Full Board acts on committee recommendation.

APPENDIX



PREPARED BY THE STAFF
OF THE CITY OF BERKELEY RENT
STABILIZATION PROGRAM
WITH ASSISTANCE FROM THE
CITY ATTORNEYS OFFICE

JACQUELINE FOSTER, Division Chief

DECEMBER 1983



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